REDRESS
seeking reparation for torture survivors

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

RESPONSE TO SIXTH PERIODIC REPORT OF

THE UNITED KINGDOM, THE BRITISH OVERSEAS TERRITORIES AND THE CROWN DEPENDENCIES (NOVEMBER 2006)

OCTOBER 2007

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1. REDRESS is an international nongovernmental organisation with a mandate to seek justice and other forms of reparation for survivors of torture and related crimes, and to make accountable all those who perpetrate, aid or abet such acts. It fulfils its mandate through a variety of means, including providing legal advice and assistance to survivors to help them gain both access to the courts and redress for their suffering; providing information, advice, training and mentoring to local counterparts to improve access to justice and reparation in national contexts; promoting the development and implementation of national and international law and standards and institutions capable of providing effective and enforceable civil and criminal remedies for victims of crimes under international law; and increasing awareness of the challenges faced by victims in their efforts to secure remedies and redress. REDRESS' expertise on access to justice and reparation has been internationally recognised and its comparative study on reparation for torture in 31 countries worldwide was submitted by the United Nations Special Rapporteur on Torture to the United Nations General Assembly for its consideration (UNGA Res. A/58/120). It has also been one of the principal advocates behind the recent adoption of the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.[1]

2. This submission focuses on the UK's obligations under Article 7 of the International Covenant on Civil and Political Rights (hereinafter, the Covenant') and in particular, paragraphs 16 to 29 of the UK Government's Report which deals with "extraordinary rendition" flights; use of torture and memoranda of understanding on deportation with assurances; and the *Ramzy* case before the European Court of Human Rights.

A. "EXTRAORDINARY RENDITION" FLIGHTS

3. With respect to rendition flights, in its Sixth Periodic Report the UK Government states:

[1] Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

> 16 During the period in which this Response was prepared, there has been widespread public attention to alleged "renditions" of terrorist suspects. The Committee may wish to note the following.
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> 17 The Government has not approved and will not approve a policy of facilitating the transfer of individuals through the UK (including the UK's OTs) to places where there are substantial grounds to believe they would face a real risk of torture. The Government would not assist in any case if to do so would put us in breach of UK law or international obligations.
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> 18 In view of the level of concern, in late 2005 and early 2006, the Government has carried out an extensive search of files. The search did not uncover any evidence of detainees being rendered through UK territory or airspace (or that of the OTs) since 11 September 2001. There was also no evidence of detainees being rendered through the UK (or OTs) since 1997 where there were substantial grounds to believe there was a real risk of torture. There were four cases in 1998 where the United States requested permission to render one or more detainees through the UK or OTs. In two of these cases, the Government granted the request, and in the other two it refused. In both the cases where the request was granted, the individuals were being transferred to the United States in order to face trial on terrorism charges and were subsequently convicted.

4. REDRESS is concerned by the UK Government's restrictive reading of its obligations under Article 7 of the Covenant by which it appears to consider that it only has negative obligations to refrain from approving or assisting in the rendition of individuals through its territory. This reading of its obligations under the ICCPR is supported by a previous statement by the Secretary of State for Foreign and Commonwealth Affairs:

> We would expect the US authorities to seek permission to render detainees via UK territory and airspace, including overseas territories, and we will grant permission only if we are satisfied that the rendition would accord with UK law and our international obligations.[2]

5. The prohibition of torture in Article 7 of the Covenant contains both positive and negative obligations. In order to comply with its positive obligations under the ICCPR, the UK Government must do much more than simply wait for the US Government to seek permission to render detainees via UK territory/airspace, a position entirely reliant on the US Government acting in good faith and always seeking the UK Government's permission.

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[2] Hansard, 20th January 2006, column 38WS, at: http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060120/wmstext/60120m01.htm See "Note From Andrew Tyrie to The Intelligence And Security Committee" dated 30 October 2006 at page 5, available at: http://www.extraordinaryrendition.org/index.php?option=com_docman&task=doc_details&gid=40&Itemid=27. This position was reiterated on 26th June 2007 by Minister Kim Howells: "*We have made it clear to the US authorities that we expect them to seek permission to render detainees via UK territory and airspace, and that we will grant permission only if satisfied that the rendition would accord with UK law and our international obligations*" [Hansard Column 47WH http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070626/halltext/70626h0004.htm#column_25WH].

6. Rather, the obligations contained in Article 7 require that the UK Government take proactive steps to ensure that its territory is not used for the purpose of rendition and where complaints or allegations of rendition are made, conduct a prompt, independent, effective and thorough investigation capable of leading to the punishment[3] of those responsible and provide full and adequate reparation to any victims of rendition.[4] This is particularly the case in light of the explicit acknowledgment by the US Government of its rendition programme[5] and the reports of the European Parliament[6] and the Council of Europe[7] which suggest that the US has used UK territory as part of this programme.

7. However, to date, the UK Government has failed to conduct an investigation into the allegations that "extraordinary renditions" have taken place that would meet the requirements of Article 7 of the Covenant. The Government has indicated that 'we carried out extensive searches of official records and found no evidence that detainees were rendered through the UK or overseas territories since 1997 if there were substantial grounds to believe that there was a real risk of torture.'[8] The Government has to date only revealed basic information on five US requests for permission to render persons through the UK.

8. In 2005, the UK NGO Liberty formally requested a range of UK authorities to investigate whether UK airports had been used to transport persons to known torture destinations. Eighteen months later a senior police officer concluded no "extraordinary rendition" flights operated by the CIA have come through the UK.[9] However, as stated by six leading human rights organisations:

> [The police] appear mainly to have concentrated upon reviewing the publicly available literature and media reports rather than conducting an in-depth independent investigation, of the type called for by the Council of Europe and the European Parliament.
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> During the time taken for this review the practice of 'extraordinary rendition', by which people are abducted, detained outside the rule of law, and flown to third countries where they have faced torture, has become recognised as fact. President Bush has admitted the existence of secret prisons operated by the CIA around the world and the Council of Europe has identified bilateral agreements by European governments

[3] General Comment 20, at para. 14, *see also Rajapakse v. Sri Lanka* (1250/04) CCPR/C/83/D/1250/2004

[4] See REDRESS' submission to the JCHR on "The alleged use of UK airports in extraordinary renditions and the implications of this for UK compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)," 22 December 2005, available at: http://www.redress.org/casework/JCHRrendtions22Dec05.pdf.

[5] http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html.

[6] European Parliament, 'Report on the alleged use of European countries by the CIA for the Transportation of and illegal detention of prisoners,' Rapporteur Giovanni Claudio Fava, (26 January 2007).

[7] Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states, Report Committee on Legal Affairs and Human Rights Rapporteur: Mr Dick Marty, 12 June 2006

[8] See footnote 1

[9] Letter from Chief Constable Todd to Liberty, 5th June 2007, at: http://www.liberty-human-rights.org.uk/news-and-events/pdfs/er-acpo-response-june-07.pdf

> with US authorities which gave the CIA a blank cheque to land, refuel and fly aircraft over their territories without any checks.
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> It is clear that the [police] review will not do, especially if the UK is to live up to its commitments on the complete prohibition on torture and cruel, inhuman or degrading treatment or punishment. Until a full and independent investigation takes place into all aspects of the extraordinary rendition programme, there will always be a suspicion of UK government collusion in this practice. [10]

9. The role of the UK in "extraordinary renditions" is also a matter of concern for the UK Parliament. The All Party Parliamentary Group on Extraordinary Rendition (APPG) has made a number of submissions to parliamentary committees as well as having direct contact with various Government officials. The APPG has been vocal in calling for the Government to cooperate fully with the investigations of international bodies. It also calls for the UK Government to hold an investigation into the use of UK territory to facilitate renditions by the CIA.[11]

10. The House of Lords and House of Commons Joint Committee on Human Rights (JCHR) has also endeavoured to examine the issue. The JCHR has two ongoing inquiries under which it is investigating this issue: the first is examining issues relating to Counter Terrorism Policy and Human Rights and the second on UK Compliance with the UN Convention against Torture. In 2006, the JCHR sought to have a meeting with the Director General of the Security Service to look at, amongst other things, 'any information which the Service may have about extraordinary renditions using UK airports.'[12] However, the Director General declined to meet the JCHR, prompting it to note the following:

> [W]e regret that we did not have the opportunity to ask her a number of important questions of concern to us in connection with this inquiry. We have no desire to obtain access to State secrets, but we do consider it to be a matter of some importance that the head of the security services be prepared to answer questions from the parliamentary committee with responsibility for human rights.[13]

11. On this basis, the UK Government must conduct a full, effective and independent investigation, potentially in the form of a public inquiry in order to meet its international obligations, including Article 7 of the Covenant. Such an inquiry would need to cover, amongst other things, the following areas:

    - All documentation related to the named suspect CIA flights which landed in the UK or flew over it, including flight plans and anything relating to the purpose of the flights, persons on board and the final destination of the flight;

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[10] London Times 14 June 2007, by AMNESTY INTERNATIONAL (UK), HUMAN RIGHTS WATCH, JUSTICE, LIBERTY, REDRESS, MEDICAL FOUNDATION FOR THE CARE OF VICTIMS OF TORTURE

[11] See http://www.extraordinaryrendition.org/

[12] Counter Terrorism Policy and Human Rights, Twenty–fourth report of Session 2005-2006, at page 93
http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/240/240.pdf

[13] Paragraph 161

- Collation of such information and documentation with other information linking persons to those flights who are known to have been rendered and/or tortured;
- Any information-sharing agreements or practice between the UK and the US which led to renditions and any involvement of UK security, immigration, police and other related services with US security officers in renditions; particularly whether the caveat system[14] is adequate in preventing illegal operations based on information sharing, given that the US, has ignored certain caveats relating to operational concerns in the past;[15]
- The role of UK security officers in interviews of persons rendered or held in secret detention, including the supply of questions, receipt of interview transcripts, knowledge of interrogation techniques used and transfer o intelligence information to foreign interrogators, as well as the conduct of interviews by UK interrogators;
- Whether UK security officers acted unlawfully in any involvement in renditions;
- What oversight existed for any UK involvement in the US programme;
- Any legal advice sought about possible UK complicity in rendition;
- The avenues available for victims of rendition to obtain compensation;
- The extent to which UK anti-terrorism legislation, and both formal and informal arrangements between the UK and US or other foreign intelligence services, need to be reformed from a human rights perspective to avoid repetition of abuses;
- The need for effective parliamentary monitoring and legal supervision over UK secret and intelligence services and the formal and informal networks of which they are part;
- Whether specific national laws to regulate and monitor the activities of third countries' secret services operating in the UK are adequate to prevent the abuse of human rights;
- Proper implementation by the UK Government of Article 3 of the Chicago Convention which excludes State aircraft from the scope of the Convention.

B. USE OF TORTURE AND MEMORANDA OF UNDERSTANDING ON DEPORTATION WITH ASSURANCES

12. In the UK Government's Sixth Periodic Report, the relevant sections relating to the Use of Torture and Memoranda of Understanding on Deportation with Assurances are as follows:

> 19 An appeal by the UK government to the House of Lords on the use of torture evidence arose as a result of individual appeals by 10 of the individuals who were certified and detained under the ATCS Act. On 8 December 2005, the Law Lords ruled that there is an exclusionary rule

[14] mentioned in the Intelligence and Security Committee Report on Rendition, July 2007, at http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725_isc_final.pdf, See paras 118-126

[15] Id at para 124

precluding the use of evidence obtained by torture. The effect of this ruling is simply to replace the UK Governments stated policy, namely, not to rely on evidence which is believed to have been obtained by torture by an "exclusionary" rule of law.

20 To date, the UK Government has signed Memoranda of Understanding (MoU) on Deportation with Assurances (DWA) with Libya, Jordan and the Lebanon and is in discussions with a number of other countries from Northern Africa and the Middle East.

21 MoUs on Deportation with Assurances enable the Government to obtain assurances that will safeguard the rights of individuals being returned, for example in relation to humane treatment, access to medical care, adequate nourishment and accommodation, in accordance with internationally accepted standards - in particular Article 3 of the ECHR (prohibition of torture or inhuman or degrading treatment). The specificity of MoUs, including in relation to particular individuals, mean that they provide an additional level of protection over and above that provided by international agreements.

22 The UK Government has responsibility to the British public to take action to reduce the threat of terrorism in the UK and to consider all options for doing so. MoUs on Deportation with Assurances are an important tool in this respect, which enable the Government to remove individuals who are foreign nationals and pose a terrorist threat to the UK, thereby providing a means of disrupting their activity and reducing the threat to national security.

13. The UK Government has an obligation to combat terrorism[16] and to protect the UK from terrorist threats. However, the UK Government can only employ counterterrorism strategies that accord with international law, in particular international human rights, refugee and humanitarian law,[17] including the prohibition of torture and cruel, inhuman or degrading treatment or punishment. In this respect, the UK Government's attempt to relativise or balance the prohibition of torture against other considerations undermines the absolute prohibition.

14. The prohibition of torture under Article 7 of the Covenant, international and regional instruments and customary international law is absolute and cannot be derogated from under any circumstance including in times of war, internal political instability or public emergencies.[18] The prohibition of torture includes an absolute prohibition against forcibly sending, transferring or returning a person to a country where he or she may be submitted to torture and other cruel, inhuman or degrading treatment or punishment (*non-refoulement*).[19] General Comment 20 provides that:

[16] United Nations Security Council Resolution 1373
[17] United Nations Security Council Resolution 1566
[18] General Comment 20, at para. 3.
[19] This prohibition is found in the European Convention on Human Rights (ECHR), and has been affirmed in numerous other international and regional instruments, including: article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; article 13 (4) of the Inter-American Convention to Prevent and Punish Torture; article 22 (8) (general clause on *non-refoulement*) of the American Convention on Human Rights; article 8 of the Declaration on the

> States must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.[20]

15. Article 3 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment specifies that a state's human rights record is relevant in determining whether a person may be subjected to torture in that state. It provides that:

> For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consisted pattern of gross, flagrant or mass violations of human rights.

16. The jurisprudence that has developed within the European human rights system confirms the protection of persons against expulsion to a country where they are at risk of torture and inhuman or degrading treatment or punishment.[21] The European Court of Human Rights has held that a State party to the Convention may itself be responsible for violating the prohibition of torture if it sends a person to a State when there are substantial grounds to believe that they may suffer torture.[22]

17. As a result, the United Nations Special Rapporteur on Torture called on Governments to scrupulously observe the principle of *non-refoulement* and not expel any person to frontiers or territories where they run a serious risk of torture and ill treatment. In addition, the Special Rapporteur requested 'Governments to refrain from seeking diplomatic assurances and the conclusion of memoranda of understanding in order to circumvent their international obligation not to deport anybody if there is a serious risk of torture or ill treatment.'[23]

18. The Special Rapporteur notes further that the fact that assurances are sought shows in itself that the sending country perceives a serious risk of the deportee being subject to torture or ill-treatment upon arrival in the receiving country.

Protection of All Persons from Enforced Disappearance; article 3 (1) of the Declaration on Territorial Asylum; and article II (3) of the Organization of African Unity's Convention Governing the Specific Aspects of Refugee Problems in Africa.

[20] At para. 9. *See also,* 'Concluding Observations on the United States,' (2006) UN Doc. CCPR/C/USA/CO/3.

[21] European Court of Human Rights, *Soering v. United Kingdom*, Judgment of 7 July 1989, Series A, Vol.161 (this is the case which established the general principle that the *nonrefoulment* obligation attaches to article 3); *Nsona v. The Netherlands*, Judgment of 28 November 1996, 1996-V, no. 23; *Chahal v. The United Kingdom*, Judgment of 15 November 1996, 1996-V, no. 22; *Ahmed v.Austria,* Judgment of 7 December 1996, 1996-VI, no. 26; *Scott v. Spain* Judgment of 18 December 1996, 1996-VI, no. 27; *Boujlifa v. France*, Judgment of 21October 1997, 1997-VI, no. 54*; D. V. The United Kingdom* 02 May 1997, 1997-III, no. 37; *Paez v. Sweden* Judgment of 30 October 1997, 1997-VII, no. 56.

[22] *Loizidou v Turkey* Series A No 310 and *Soering* post; idem. *See also Lawless v Ireland* (No 3) (1961) and *Ireland v UK* (1978) 2 EHRR 25.

[23] Press Release, 23 August 2005, available from http://www.unhchr.ch/huricane/huricane.nsf/view01/9A54333D23E8CB81C1257065007323C/opendocument.

Diplomatic assurances are not an appropriate tool to eradicate this risk. Most of the States with which the memoranda might presumably be concluded are parties to the United Nations Convention against Torture (Afghanistan, Algeria, Egypt, Jordan, Libyan Arab Jamahiriya, Morocco, Saudi Arabia, Syrian Arabic Republic, Tunisia and Yemen) and/or to the International Covenant on Civil and Political Rights (Afghanistan, Algeria, Egypt, Iran, Iraq, Jordan, Libyan Arab Jamahiriya, Sudan, Syrian Arab Republic, Tunisia and Yemen) and are therefore already obliged not to resort to torture or ill-treatment under any circumstances. Such memoranda of understanding therefore do not provide any additional protection to the deportees.

19. The Government's policy to use diplomatic assurances also goes against the well-established principles of non-refoulement set out in *Chahal v United Kingdom*.[24] In *Chahal,* the European Court of Human Rights rejected diplomatic assurances as a safeguard against torture and ill-treatment. The Court was not persuaded that the assurances would provide Mr. Chahal with an adequate guarantee of safety, and the decision established the standard that diplomatic assurances are not adequate for returns to countries where torture is 'endemic', or a 'recalcitrant or enduring problem', as well as reaffirming the *non-refoulement* obligation in human rights law.[25]

20. UK courts also rejected a request from Russia to extradite two men suspected of having committed crimes in Chechnya.[26] Despite diplomatic assurances provided by the Russian Government that the men would not be tortured, the Bow Street Magistrates' Court determined that Mr. Zakaev faced a substantial risk of torture upon his return and relied on evidence given that a witness statement implicating Zakaev was extracted by torture.

21. The details or specificity of any agreement, according to the UK Government, will adequately safeguard the returnees' safety. However, and before looking at more fundamental problems in paragraph 9 below, many serious questions can already be raised, for example, regarding the idea that returnees could be monitored in a way which will safeguard their rights: how will any independent monitoring body be agreed upon, and what would happen, for example, if no agreement could be reached; will such independent body be agreed before anyone is returned, or afterwards; what, in any event, would constitute an independent body, even if both states agreed on it - there already are well-established independent bodies such as the European Committee for the Prevention Against Torture - what is the likelihood of their co-operating (or any other genuinely independent body) in the context of 'lending legitimacy' to a process fraught with difficulties; what expertise in torture issues, if any, will persons involved be required to have; what happens if the receiving State fails to co-operate with the UK's representative, and does not afford proper visits, private or otherwise, and/or does not afford independent medical examination of the returnee if the representative wants such to take place; what is the mandate of the representative, other than to report to the

[24] ECtHR Judgment of 15 November 1996, 1996-V, no 22.
[25] Human Rights Watch, *Still At Risk* : *Diplomatic Assurances No Safeguard Against Torture,* April 2005 Vol. 17, No. 4 (D), at page 15, http://hrw.org/reports/2005/eca0405/
[26] Bow St. Magistrate Court decision of Workman, 13 November 2003.

States; if the representative is told or suspects that torture has taken place, what can he/she do about it, and what is he/she expected to do about it, and how; if an allegation of torture is raised with the receiving state by the representative and the receiving state ignores it, how is the interest of the returnee to be protected. The Special Immigration Appeals Commission noted in *DD & AS* that such post-return monitoring bodies must, in particular, be independent of the receiving state government.[27] The 'independent bodies' being considered or in which provisional arrangements have been agreed are local NGOs operating in the returnee countries. In Jordan, the organisation Al Adaleh Human Rights Centre, has been named as the nongovernmental organisation tasked with post-return monitoring, and its' experience in independently monitoring detainees in a highly politically charged environment is untested. In Libya, the Qadhafi Development Foundation was identified as the post-return monitoring body; the Special Immigration Appeals Commission found that it lacked sufficient independence and consequently, and for a number of additional reasons, determined that return to Libya would not satisfy the necessary safeguards.[28]

22. The Joint Committee of Human Rights, in its review of this issue noted the UK Government's position that "Baroness Ashton was clear in her evidence to us that the system of diplomatic assurances depended on mutual good faith between Governments. She considered it inappropriate to look behind that good faith, and stressed that such agreements should not be entered into on the presumption that they were unlikely to be complied with."[29] REDRESS submits that mutual good faith is an insufficient criterion to guarantee that agreements will be complied with, particularly in respect of countries where torture is endemic. The Joint Committee on Human Rights concluded that: "The evidence we have heard in this inquiry, and our scrutiny of the Memoranda of Understanding agreed between the Government and the Governments of Libya, Lebanon and Jordan, have left us with grave concerns that the Government's policy of reliance on diplomatic assurances could place deported individuals at real risk of torture or inhuman and degrading treatment, without any reliable means of redress."[30]

23. In sum, memoranda do nothing to deal with the fundamental problems of diplomatic assurances:

    - Resorting to diplomacy to ensure compliance with the absolute prohibition against torture is an inadequate method for torture and other ill-treatment to be prevented; effective legislative, judicial, and administrative safeguards must be in place on a State-wide basis. Visits aimed at ensuring compliance with diplomatic assurances might be helpful depending on the circumstances of each case, but are no guarantee against prohibited treatment, in particular because there are no available remedies to enforce the assurances.
    - Even the best, unhindered monitoring mechanisms using trained monitors can nonetheless be ineffective in preventing acts of torture. This is because torture

[27] DD and AS, Appeal No: SC/42 and 50/2005, decided 27 April 2007, available online here: http://www.siac.tribunals.gov.uk/Documents/siac_sc_42_50_2005.pdf.
[28] Ibid.
[29] The 19th Report of the Joint Committee of Human Rights, 2005-06 Session, Chapter 5, available online at: http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/185/18502.htm.
[30] Ibid., at para 129.

is almost always practiced secretly; States that torture are very familiar with how to cover their tracks. They generally use 'trained' torturers who leave little trace of their work and operate with medical assistance to disguise the results.

- When diplomatic assurances fail to protect returnees from torture and other ill-treatment, there is no mechanism that would enable a person subject to the assurances to hold the sending or receiving Governments accountable. Diplomatic assurances have no legal effect and the person they aim to protect has no effective recourse if the assurances are breached. Furthermore, the sending Government has no incentive to find that torture and other ill-treatment has occurred following the return of an individual - doing so would amount to an admission that it has violated its own *non-refoulement* obligation. As a result, both the sending and receiving Governments share an interest in creating the impression that the assurances are meaningful rather than establishing factually that they actually are.

C. *RAMZY* CASE

24. In the Sixth Periodic Report, the UK Government discusses the *Ramzy* case as follows:

> 23 The UK, with Lithuania, Portugal and Slovakia, has intervened in the case of Ramzy v the Netherlands, with a view to persuading the ECtHR to revisit and reverse its ruling in *Chahal v United Kingdom* (1997) 23 EHRR 413. The latter held that, in considering whether a removal would be incompatible with Article 3 of the ECHR, it was not legitimate to have regard to the conduct of the individual to be removed, nor to balance the risks to national security if the person remained against the risks to the person if removed. The UK believes that it should be possible to have regard to the risks to national security when considering the compatibility of removal. The UK interprets the provisions of Article 7 ICCPR along these same lines.
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> 24 The Government believes that in arguing for such a balancing test, no challenge is being made to the absolute nature of the prohibition in Article 3 of the ECHR against a Contracting State itself subjecting an individual to a real risk of Article 3 ill-treatment. The Government's view is that the context of removal involves assessments of the risk of ill-treatment and needs to afford proper weight to the fundamental rights of the citizens of, and other residents in, the Contracting States who are threatened by terrorism. The Government therefore believes that it is necessary and appropriate for all the circumstances of a particular case to be taken into account in deciding whether or not a removal is compatible with the ECHR: national security considerations cannot be dismissed as irrelevant in this context.

25. REDRESS is extremely concerned by the UK Government's attempts to revisit and reverse *Chahal*, which attempt is nothing less than an attempt to undermine

the absolute prohibition against torture. REDRESS has joined with other NGOs to submit a brief to the ECtHR.[31]

D. CONCLUDING OBSERVATIONS

On the Concluding Observations of the Human Rights Committee, the UK Government responded:

> *Paragraph 7 (Concluding Observations). The State party should consider, as a matter of priority, how persons subject to its jurisdiction may be guaranteed effective and consistent protection of the full range of Covenant rights. It should consider, as a priority, accession to the first Optional Protocol.*
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> 25 The Government has noted that what the Committee has called the "general obligation" on States Parties to the ICCPR is "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the ICCPR" without discrimination. The Government considers that this obligation, as the language of Article 2 of the ICCPR makes very clear, is essentially an obligation that States Parties owe territorially, i.e. to those individuals who are within their own territory and subject to the jurisdiction of the UK.
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> 26 In paragraph 10 of "General Comment No. 31", the Committee has suggested that there may be circumstances in which the ICCPR has effect outside the territory of a State Party. The Government considers the ICCPR can only have such effect in very exceptional cases. The Government has noted the Committee's statement that the obligations of the ICCPR extend to persons "within the power or effective control of the forces of a State Party acting outside its territory". Although the language adopted by the Committee may be too sweeping and general, the Government is prepared to accept, as it has in relation to the application of the ECHR, that, in these circumstances, its obligations under the ICCPR can in principle apply to persons who are taken into custody by UK forces and held in UK-run military detention facilities outside the UK.
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> 27 The Government has reviewed the question of the optional right of individual petition under the ICCPR, the International Convention against all forms of Racial Discrimination (ICERD), the United Nations Convention against Torture (UNCAT), and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 2004 as part of a comprehensive review of the UK's position under international human rights treaties. The Government published its conclusions on 22 July 2004.[51]
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> 28 The UK seeks to comply with these treaties and has given effective protection in its law. There is strong legislation against discrimination, including discrimination against ethnic minorities and the disabled. In addition, the HRA 1998, which was fully brought into force on 2 October

[31] The joint NGO submissions are available online here:
http://www.redress.org/casework/RamzyBriefNov2005.pdf;
http://www.redress.org/casework/RamzyAnnexNov2005.pdf.

> 2000, gives further effect in the UK to civil and political rights in the ECHR. These cover many of the rights in these treaties and allow access to these rights in the UK domestic courts.
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> 29 The UK Government has not seen a compelling need to accept individual petition to the UN. The practical value to the individual citizen is unclear and there is also to be considered the cost to public funds of preparing submissions of the government's opinion on the subject matter of the petition. This could be significant if individual petition were used extensively as a means of seeking to explore the legal meaning of a treaty's provisions, a process which could not come to juridical conclusion in any case since the UN Human Rights Committee is not a court.

26. The concession that that the UK has extra-territorial obligations is now a matter of law following the decision in *Al Skeini and Others v SSD.*[32] Despite this judgment on 13 June 2007 the UK Government has to date failed to institute a proper inquiry consistent with its domestic and international law obligations into the death in custody of Baha Mousa and the torture of other civilians by UK troops in Iraq.

27. In October 2007 REDRESS published a comprehensive report on the role of the UK Army in the treatment of civilians in Iraq.[33]

28. We refer to the whole of our report as if specifically incorporated herein, and draw attention in particular to the Recommendations at pages 58 - 61 which we have made to the UK Government. These call, *inter alia*, for full public disclosure of documents relating to detainee abuse; the incorporation of proper human rights standards into military policy, doctrine and standing orders; the proper training of soldiers in human rights issues; proper safeguards to protect detainees from abuse; a full independent public inquiry into detainee abuse in Iraq and other locations as appropriate. Such an inquiry needs to include a close examination of military training, policy and doctrine, legal advice, planning and logistical issues, to assess the extent to which failures in all or any of these areas caused or impacted upon the serious human rights violations for which the UK is responsible.

29. REDRESS has also called for those responsible to be publicly identified and held accountable for all the strategic failures which led to the abuses, and for appropriate safeguards to ensure that the abuse is not repeated.

30. To date there have been a number of courts martial, but as set out in REDRESS' Report these have failed to provide conclusive answers. The UK Government has continued to fail to consider UK soldiers' treatment of Iraqi civilians with the seriousness it deserves.

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[32] [2007] UKHL 26

[33] REDRESS. UK Army in Iraq – Time to Come Clean on Civilian Torture (Oct 2007), available at: http://www.redress.org/publications/UK_ARMY_IN_IRAQ_-_TIME_TO_COME_CLEAN_ON_CIVILIAN_TORTURE_Oct%2007.pdf