



*Ending Torture. Seeking Justice for Survivors*

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## **UNITED KINGDOM'S 6<sup>th</sup> PERIODIC REPORT (DUE MAY 2017): SUBMISSION TO COMMITTEE AGAINST TORTURE ON LIST OF ISSUES PRIOR TO REPORTING**

**25 JANUARY 2016**

1. The Redress Trust (REDRESS) is an international non-governmental human rights organisation with a mandate to assist torture survivors to obtain justice and reparation for their suffering. Since its establishment in December 1992, REDRESS has accumulated wide expertise on the rights of victims of torture both within the United Kingdom ("UK") and internationally. We have previously made submissions to the UN Committee Against Torture ("the Committee") in regard to the UK's obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("UNCAT").<sup>1</sup>

2. We are now writing to bring to the Committee's attention the issues which we consider the most important in relation to the UK in advance of the adoption of the List of Issues Prior to Reporting at the 57th session of the Committee to be held from 18 April to 13 May 2016. We note, however, that most of the thirty-one "Principal subjects of concern and recommendations" which the Committee set out in its May 2013 *Concluding observations on the UK's 5<sup>th</sup> periodic report* remain pertinent.<sup>2</sup> In some of the issues below on which we focus there have been significant developments since May 2013.

### **Issue 1: Allegations of British soldiers committing war crimes including torture and degrading treatment in Iraq**

3. The UK Government established the Iraq Historic Allegations Team (IHAT) in 2010 to investigate allegations of serious human rights violations such as torture committed by UK armed forces in Iraq, with a view to prosecuting suspects where sufficient evidence was found.<sup>3</sup> The

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<sup>1</sup> For example REDRESS, *Submission to the Committee Against Torture on its list of issues for consideration of the UK's 5th State Party Report*, 19 April 2013, available at:

<http://www.redress.org/downloads/publications/REDRESS%20SUBMISSION%20TO%20CAT%20ON%20UK%20%20%2019%2004.pdf>. See also REDRESS, *Comments to the United Kingdom's 4<sup>th</sup> Periodic Report to the Committee Against Torture*, 15 October 2004, available at: <http://www.redress.org/downloads/publications/CATRepOct2004.pdf>.

<sup>2</sup> Committee Against Torture, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its fiftieth session (6-31 May 2013)*" 24 June 2103, CAT/G/GBR/CO/5, para.9, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en).

<sup>3</sup> While most of these allegations relate to the UK's armed forces, there are also other allegations such as renditions which may have involved the UK's security agencies.

investigatory process has proved complicated, drawn-out and lacking in transparency. There has been considerable domestic litigation relating to the IHAT procedure, including since May 2013 in the *Mousa and Al Sadoon* cases with arguments in the latter case that IHAT failed to implement the procedures ordered in the former case, namely, an inquisitorial, coroners' approach to investigations.<sup>4</sup> This litigation is ongoing while IHAT continues its work. Another significant development is that the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) was sent a Communication in January 2014 on the basis that many hundreds of alleged cases of ill-treatment were widespread and systematic and constituted war crimes.<sup>5</sup> The OTP subsequently confirmed the opening of a preliminary examination<sup>6</sup> and in November 2015 it said the total allegations of ill-treatment now stand at 1268, including over 200 cases of unlawful killing in custody and situations outside of custody.<sup>7</sup>

4. There have been no criminal prosecutions of UK armed forces personnel for the crime of torture, and only a handful of court martial convictions (prior to May 2013) for lesser offences. The prospect of the truth being reached and justice achieved for victims and their families is proving to be a long and uncertain process, some seven years after the last UK troops withdrew from Iraq in 2009. We submit that where there is evidence of torture having been committed by any UK official the suspect should be prosecuted for torture and not for a lesser offence. The UK Government should explain to the Committee its charging policy for service personnel, including why the crime of torture has never been used in relation to allegations which might amount to torture under UNCAT.

5. In late 2015 and early 2016 there was a flurry of media reports as well as official statements relating to the work of IHAT. We are concerned that UK Minister of Defence Michael Fallon reportedly referred to the lawyers representing alleged Iraqi victims as "ambulance-chasers",<sup>8</sup> and that Prime Minister David Cameron has publicly referred to the complaints that had been made as 'spurious'.<sup>9</sup> This could be seen as interfering with the independence of the inquiry process, given that the lawyers are closely engaged with the IHAT. The Ministry of Defence filed complaints to the Solicitors Regulation Authority against the two solicitors firms representing the alleged victims,<sup>10</sup> and therefore such comments by the Minister could also be seen as trying to influence those proceedings as well. Another report indicated that IHAT was dealing with some

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<sup>4</sup> For example, *R (on the application of Mousa and others) v Secretary of State for Defence (No 2)* [2013] EWHC 2941 (Admin), available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2013/2941.html>; *R (on the application of Al Saadoon and Others) v Secretary of State for Defence*, (Mar 2015) [2015] EWHC 715 (QB).

<sup>5</sup> European Centre for Constitutional and Human Rights and Public Interest Lawyers, *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 on 10 January 2014, p. 6, available at: <http://www.ecchr.de/united-kingdom.html>.

<sup>6</sup> On 2 December 2014 the OTP published its *Report on Preliminary Examination Activities 2014*, and covered the Iraq "Situation" in paragraphs 42-57. It concluded at para.57: "The Office is in the process of conducting a thorough factual and legal assessment of the information received in order to establish whether there is a reasonable basis to believe that the alleged crimes fall within the subject-matter jurisdiction of the Court. In accordance with its policy on preliminary examination, the Office will also continue to gather information on relevant national proceedings at this stage of analysis." The *Report* is available at <http://www.icc-cpi.int/iccdocs/otp/OTP-Pre-Exam-2014.pdf>.

<sup>7</sup> OTP, *Report on Preliminary Examination Activities 2015*, pp. 7-10, available at <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>. The *Report* also indicated that crimes allegedly occurred in military detention facilities and other locations under the control of UK services personnel in southern Iraq, including in temporary detention/processing facilities and in longer-term detention and internment facilities. The allegations include cases of torture and male on male rape and other allegations of sexual violence. The OTP is currently engaged in processing and analysing the vast amount of material provided by the communication senders while conducting a thorough evaluation of the reliability of the sources and the credibility of the information received.

<sup>8</sup> Sunday Telegraph, *Defence secretary Michael Fallon: suspend the human rights act to protect our troops*, 26 December 2015, available at: <http://www.telegraph.co.uk/news/politics/12070235/Defence-secretary-Michael-Fallon-suspend-the-human-rights-act-to-protect-our-troops.html>. He reportedly said: 'We don't need these ambulance-chasing British law firms. It is not only extremely expensive but it inhibits the operational effectiveness of our troops because they start to worry about whether they will end up in a court or not.'

<sup>9</sup> Sky News, *PM Targets 'Spurious' Iraq War Legal Claims*, 22 January 2016, available at: <http://news.sky.com/story/1627433/pm-targets-spurious-iraq-war-legal-claims>.

<sup>10</sup> Guardian, *Law firm referred to disciplinary tribunal over Al-Sweady inquiry*, 6 January 2016, available at <http://www.theguardian.com/uk-news/2016/jan/05/law-firm-leigh-day-solicitors-disciplinary-tribunal-al-sweady-inquiry>.

280 alleged unlawful killings, but only 25 were under investigation; the head of IHAT said that “there are serious allegations that we are investigating..., which incorporates homicide, where I feel there is significant evidence to be obtained to put a strong case before the Service Prosecuting Authority to prosecute and charge;” more than 1,500 victims were being dealt with.<sup>11</sup>

6. It is imperative that all the alleged crimes are properly investigated without interference or inappropriate pressure from the UK Government, and that human rights lawyers who have been working on these matters on behalf of Iraqi victims are not subjected to improper abuse by the Government.

## **Issue 2: Allegations of UK complicity in torture in the context of counter-terrorism**

7. The Committee is aware of the judge-led Detainee Inquiry (the Gibson Inquiry) into complicity in torture set up in 2010 to investigate allegations that the UK’s security agencies were complicit in rendering persons to Guantanamo Bay and/or acted unlawfully in the course of interrogating them there or *en route* there; the Committee is also aware that the Inquiry was prematurely terminated in January 2012.<sup>12</sup> In December 2013 the Government announced that the Intelligence and Security Committee (ISC) would take over the investigation of the allegations of UK complicity in torture. The inquiry remains pending before the ISC with little progress achieved to date, having begun its work on the issue in June 2014. The ISC was dissolved prior to the election in May 2015.<sup>13</sup> It has now been re-constituted with Dominic Grieve QC MP, the former Attorney General, as Chair.

8. This matter has stretched for longer than a decade, since early 2005 when allegations of UK complicity in torture first arose, without any substantive progress. What was meant to be an independent judge-led inquiry turned into an ISC inquiry, which is structurally incapable of complying with the UK’s international obligations as it is not sufficiently independent.<sup>14</sup>

## **Issue 3: Use of torture evidence in any proceedings and in Deportations with Assurances**

9. The UK Government uses deportation with assurances (DWA), also known as diplomatic assurances, to justify the deportation of foreign nationals and stateless persons suspected of terrorism related offences to countries in which a widespread practice of torture is alleged. The FCO has claimed that this “has enabled the UK to reduce the threat from terrorism by allowing foreign nationals who pose a risk to our national security, to be deported, while still meeting our domestic and international human rights obligations.”<sup>15</sup> In 2014 there were functioning DWA arrangements with Algeria, Jordan, Lebanon, Ethiopia and Morocco.<sup>16</sup>

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<sup>11</sup> Independent, *British soldiers could face prosecution for crimes committed during Iraq conflict, investigators confirm*, 1 January 2016, available at: <http://www.independent.co.uk/news/uk/home-news/british-soldiers-could-face-prosecution-for-crimes-committed-during-iraq-conflict-investigators-a6793271.html>.

<sup>12</sup> The reason given was that the Metropolitan Police Service was investigating whether any criminal charges should be brought. In Scotland there are also police inquiries underway regarding renditions.

<sup>13</sup> Intelligence and Security Committee, *Intelligence and Security Committee of Parliament further Inquiry on the Role of the UK Government and Security and Intelligence Agencies in relation to Detainee Treatment and Rendition Senate Intelligence Committee Report*, 17 December 2014, available at: <http://isc.independent.gov.uk/news-archive>.

<sup>14</sup> With the publication of the USA Senate Select Committee on Intelligence report on CIA torture in December 2014 (see *Unclassified Select Committee on Intelligence –Committee Study on the Central Intelligence Agency’s Detention and Interrogation Program*, 9 December 2014, human rights organisations reiterated their concerns about the lack of adequate investigations and the inadequacy of the ISC to address the allegations, in an open letter to the Prime Minister. See REDRESS and others, *NGO letter to the Prime Minister urging him to establish a judge-led inquiry into UK involvement in rendition and torture*, 16 December 2014, available at: <http://www.redress.org/downloads/publications/NGO%20letter%20to%20Prime%20Minister%20161214.pdf>.

<sup>15</sup> FCO, *Human Rights and Democracy: The 2014 Foreign and Commonwealth Office Report*, March 2015, p. 67, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415910/AHRR\\_2014\\_Final\\_to\\_TSO.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415910/AHRR_2014_Final_to_TSO.pdf).

<sup>16</sup> *Ibid.*

10. REDRESS has consistently opposed the use of DWAs as being incompatible with States' obligations under the prohibition of torture,<sup>17</sup> both before and after the judgment in *Othman v United Kingdom*<sup>18</sup> in which the ECtHR ruled that the UK would not breach its obligations in that particular case in deporting a terrorist suspect to Jordan on the basis of assurances. We respectfully agree with the Committee in its May 2013 *Concluding observations* (made after *Othman*) that it "considers that diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the [Torture] Convention."<sup>19</sup>

11. In 2013 the Home Office mandated the Independent Reviewer of Terrorism Legislation<sup>20</sup> to "review the framework of the UK's [DWA] policy to make recommendations on how the policy might be strengthened or improved, with particular emphasis on its legal aspects".<sup>21</sup> The review report has not yet been released, but was expected at the end of 2015. The 2015 Human Rights and Democracy Report made reference to the UK Special Representative for DWA,<sup>22</sup> apparently first established in 2006 with the appointment of Sir Anthony Layden,<sup>23</sup> who apparently resigned in 2015.<sup>24</sup> There is a lack of transparency about the role of the UK Special Representative for DWA who was not been mentioned in the FCO's Annual Human Rights Reports before March 2015.

12. Foreign nationals or stateless persons who are suspected of acts of terrorism should be prosecuted.

#### **Issue 4: Indefinite or lengthy immigration detention of migrants/asylum seekers/refugees, and their treatment in detention**

13. The Committee raised its concerns regarding this issue in its May 2013 *Concluding observations*, and there have been significant developments since then. A committee of MPs held an investigation into the matter and published its *Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*<sup>25</sup> in March 2015. This was not an official parliamentary inquiry but subsequently in September 2015 a full debate on the recommendations took place in the House of Commons<sup>26</sup> and passed a resolution supporting the recommendations in the Report and calling on

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<sup>17</sup> See REDRESS, *Joint NGO Letter regarding Denmark and diplomatic assurances against grave violations of Human Rights*, 18 June 2008, available at: [http://www.redress.org/downloads/publications/Joint%20NGO%20open%20letter%20re%20DAs\\_without%20signatures.pdf](http://www.redress.org/downloads/publications/Joint%20NGO%20open%20letter%20re%20DAs_without%20signatures.pdf); REDRESS, *The United Kingdom, Torture and Anti-Terrorism: Where the problems lie*, December 2008, available at: <http://www.redress.org/downloads/publications/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf>; REDRESS, *Submission to the Committee Against Torture on its List of Issues for Consideration of the UK'S 5th State Party Report*, April 2013, available at: <http://www.redress.org/downloads/publications/REDRESS%20SUBMISSION%20TO%20CAT%20ON%20UK%20%20%2019%2004.pdf>

<sup>18</sup> *Case of Othman (Abu Qatada) v. The United Kingdom*, ECtHR, Application No. 8139/09, Judgment of 17 January 2012.

<sup>19</sup> Committee Against Torture, *Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013)*, para 18, available at: <http://www.justice.gov.uk/downloads/human-rights/cat-concluding-observations-may-2013.pdf>.

<sup>20</sup> See Independent Reviewer of Terrorism Legislation, available at: <https://terrorismlegislationreviewer.independent.gov.uk/>.

<sup>21</sup> *Ibid.*, and see the Reviewer's Terms of Reference at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/260320/TOR\\_for\\_the\\_Independent\\_Review\\_of\\_Deportation\\_with\\_Assurances.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260320/TOR_for_the_Independent_Review_of_Deportation_with_Assurances.pdf).

<sup>22</sup> FCO, *Human Rights and Democracy: The 2014 Foreign and Commonwealth Office Report*, March 2015, p.67, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415910/AHRR\\_2014\\_Final\\_to\\_TSO.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415910/AHRR_2014_Final_to_TSO.pdf). It states: "We will continue to pursue further deportations and expect overseas visits by the UK Special Representative for DWA in support of this aim in 2015."

<sup>23</sup> See Debrett's, *Anthony Michael LAYDEN*, available at: <http://www.debretts.com/people-of-today/profile/19034/Anthony-Michael-LAYDEN>.

<sup>24</sup> Daily Telegraph, *Anti-terrorism chief quits over failure to expel suspects*, 21 February 2015, available at:

<http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/11427428/Anti-terrorism-chief-quits-over-failure-to-expel-suspects.html>.

<sup>25</sup> *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom: A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration*, 3 March 2015, available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>.

<sup>26</sup> Hansard, 10 September 2015, Cols. 559-603, available at: <http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150910/debtext/150910-0003.htm>



the Government to respond positively to them.<sup>27</sup> One of the most important resolutions was for there to be a limit of 28 days on the length of time anyone can be held in immigration detention but this was subsequently rejected by the Government in a new Immigration Bill which was passed in the House of Commons on 1 December 2015 and is currently before the House of Lords.<sup>28</sup>

14. REDRESS made a detailed submission to the *Inquiry into the Use of Immigration Detention* emphasising the suffering immigration detention causes especially to vulnerable detainees including rape and torture survivors, victims of human trafficking and domestic violence and those with serious mental health and learning difficulties; we also raised concerns about the abuse (including sexual abuse) of detainees at the hands of those who were meant to be looking after them in detention, including employees of private companies contracted the Government to run the detention centres, and the importance of complaints being properly investigated and perpetrators held to account.<sup>29</sup>

#### **Issue 5: The defence of “lawful authority, justification or excuse” to a charge of torture in the Criminal Justice Act 1988**

15. The definition of torture under section 134 of the Criminal Justice Act 1988 (CJA) is wider in scope than that of article 1 UNCAT, but it also provides defences that are *prima facie* incompatible with the UK’s obligations under UNCAT. Section 134 (4) and (5) of the CJA provides:<sup>30</sup>

(4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

5) For the purposes of this section “lawful authority, justification or excuse” means—

(a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;

(b) in relation to pain or suffering inflicted outside the United Kingdom—

(i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;

ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and

(iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.

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<sup>27</sup> *Ibid.*, Col .603.

<sup>28</sup> For a useful analysis see *House of Lords Library Note on Immigration Bill (HL Bill 79 of 2015-16)*, 16 December 2015, pages 13 -14, available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2015-0050>. Speakers referred to immigration detention without a fixed and certain time limit no longer being acceptable and that the issue of immigration detention is “one of increasing concern and justifying indefinite immigration detention is increasingly difficult”. In February 2015, the Government appointed Stephen Shaw—a former Prisons and Probation Ombudsman for England and Wales—to lead a review of immigration detention, including healthcare provision, Home Office policies and operational practices .On 26 March 2015, Lord Bates, Parliamentary Under-Secretary of State at the Home Office, said that he would write to Mr Shaw to ask him to extend his review to include the detention of pregnant women and people with disabilities. The House of Commons Library’s *Immigration Detention in the UK: An Overview* (7 September 2015), provides further background information on this subject.

<sup>29</sup> REDRESS, *Submission to the All-Party Parliamentary Group on Refugees and the All-Party Parliamentary Group on Migration*, October 2014, available at:

[http://www.redress.org/downloads/publications/REDRESS%20Submission%20to%20Detainee%20Inquiry%20\(Immigration\)%203%20October%202010.pdf](http://www.redress.org/downloads/publications/REDRESS%20Submission%20to%20Detainee%20Inquiry%20(Immigration)%203%20October%202010.pdf).

<sup>30</sup> Criminal Justice Act 1988, available at: <http://www.legislation.gov.uk/ukpga/1988/33/section/134>.

16. Article 1(1) UNCAT states that torture “does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”, which means that any sanctions must be lawful under international law, not just under national law; article 2(3) UNCAT specifies that “an order from a superior officer or a public authority may not be invoked as a justification for torture.” Given the wording of these sections of the CJA it would be open to a court to interpret their provisions without having to assess compliance with UNCAT.<sup>31</sup>

### Issue 6: Closed Material Procedures (CMPs)

17. The former Coalition Government, despite opposition from human rights organisations including REDRESS<sup>32</sup> and others<sup>33</sup> promulgated the Justice and Security Act 2013 (JSA)<sup>34</sup> which provides for a Closed Material Procedure in certain civil cases.<sup>35</sup> This allows evidence to be heard (on application by the State) without the plaintiff being present or represented except by a Special Advocate who is not allowed to tell the plaintiff anything about what is said or produced in the closed hearing. As a result concerns arose that a basic principle of open justice in civil claims has been compromised, and the Committee had raised its concerns in its May 2103 *Concluding observations*.<sup>36</sup>

18. In 2014, an analysis was carried out by the Bingham Centre<sup>37</sup> in which there was a review of how CMPs have operated to date. The analysis found that the annual reporting requirements on the use of CMPs which the Secretary for Justice must provide to Parliament “do not ensure that enough information will be provided so that the public can be adequately informed about the occasions when CMPs are sought and why declarations are made or not made ...[I]t seems reasonable to expect that he or she should, at a minimum, deem it appropriate to provide sufficient information to enable a lawyer, researcher or journalist to ascertain from publicly available information the types of situations in which CMPs were sought and to make a judgment about whether the report is accurate and comprehensive. Simply put, subject to any secrecy requirements imposed by the courts or unless the fact of identifying the cases would imperil national security, Parliament should require that the Secretary of State’s report identify the cases, the dates on which applications were made, and the judgments that determined proceedings.”<sup>38</sup>

19. The review revealed several other concerns about how CMPs are being used and/or reported on by the Government. These were set out as follows:<sup>39</sup>

[T]he report does not provide enough information for an observer to get an adequate picture of what has happened this year. That is worrying. It would be helpful if the Secretary of State was to identify the cases to which the report refers. ... [T]he Ministry of Justice has stated that the powers have

<sup>31</sup> See REDRESS (and others), *Ending Impunity in the United Kingdom for genocide, crimes against humanity, war crimes, torture and other crimes under international law*, July 2008, pp 12-13, available at:

[http://www.redress.org/downloads/publications/UJ\\_Paper\\_15%20Oct%2008%20\\_4\\_.pdf](http://www.redress.org/downloads/publications/UJ_Paper_15%20Oct%2008%20_4_.pdf).

<sup>32</sup> REDRESS, *Justice and Security Green Paper: Consultation: Submission from the Redress Trust*, 6 January 2012, available at: <http://www.redress.org/downloads/publications/Justice%20and%20Security%20Green%20Paper%20Consultation%20REDRESS%20submission%20-%20Copy.pdf>.

<sup>33</sup> For example, Human Rights Joint Committee: *Twenty-Fourth Report: The Justice and Security Green Paper*, 27 March 2012, available at: <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/286/28602.htm>.

<sup>34</sup> <http://services.parliament.uk/bills/2012-13/justiceandsecurity.html>.

<sup>35</sup> The cases HMG had in mind were spelled out in the Government’s Green Paper: “Cases of this kind have a disproportionate impact on our international, diplomatic and intelligence relationships with foreign governments. Since *Binyam Mohamed*, the Government and its foreign government partners have less confidence than before that the courts will accept the view of Ministers on the harm to national security that would result from disclosure”. See HMG, *Justice and Security Green Paper*, October 2011, p.14 para.1.43, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228860/8194.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228860/8194.pdf).

<sup>36</sup> Note 2 above, paragraph 12.

<sup>37</sup> Bingham Centre for the Rule of Law, *Closed Material Procedures under the Justice and Security Act 2013: A review of the First Report by the Secretary of State*, August 2014, p. 7, available at: [http://www.biicl.org/documents/284\\_cmps\\_the\\_first\\_year\\_-\\_bingham\\_centre\\_paper\\_2014-03.pdf](http://www.biicl.org/documents/284_cmps_the_first_year_-_bingham_centre_paper_2014-03.pdf).

<sup>38</sup> *Ibid*.

<sup>39</sup> *Ibid*, pp.7-8.

been invoked 'sparingly' but that is not an appropriate way to characterise their use. Sparingly is a relative concept... All we know is that a declaration [to hold a CMP hearing] has been sought on five occasions in the first year. While it is a small number of cases, the early indications are that CMPs will be deployed in a very, very wide range of circumstances... They include claims brought by non-British citizens abroad and by British citizens living in the UK. The claims range from those which relate to the deprivation of liberty to those which concern the imposition of economic sanctions. Some cases are focussed on the past – not least Britain's relationship with the IRA – and others relate to much more contemporary issues such as allegations of recent misconduct by the security services. It seems nothing is off the table and, importantly, we are a long way from the archetypal case that was the impetus for the legislation, which was an action against the government by returning Guantanamo detainees. In the scope of cases, if not in the number, the use of the powers is anything but 'sparing'.... [B]ecause only a limited amount of information falls under the reporting requirements, the report does not reflect the full extent of moves towards using closed procedures more generally... There has also been one attempt – partially successful – to hold an entire criminal trial out of the public eye.

20. This first analysis of how CMPs are being used *and reported* does little to allay all the concerns aired at the time the fundamental change to the common law was being proposed.

### **Issue 7: Universal jurisdiction**

21. The Committee included in its May 2013 *Concluding observations* the recommendation that the UK takes "all necessary steps to effectively exercise universal jurisdiction over persons allegedly responsible for acts of torture, including foreign perpetrators who are temporarily present in the United Kingdom."<sup>40</sup> We respectfully agree that this is a key issue, and the record shows that there has been very little progress in prosecuting suspected perpetrators of international crimes, including torture, in UK courts.

22. While all potential prosecutions and investigations should be dealt with on their merits our concern is that there have been so few prosecutions and/or investigations, which seems to be a reflection of the Government not regarding the issue with the seriousness it deserves. If there was a greater commitment to making the UK effectively a 'non-safe haven' and more resources allocated to this, including the creation of a specialist police unit, it is likely more suspected perpetrators coming into the UK would be held accountable.

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<sup>40</sup> Note 2 above, para. 22.