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Ms Kate Fox
Secretary
UN Human Rights Committee
Office of the United Nations
High Commissioner for Human Rights
UNOG-OHCHR

1211 Geneva 10, Switzerland

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**AMNESTY
INTERNATIONAL**



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Dear Ms Fox,

Re: UNITED KINGDOM - List of Issues

I am writing to provide information to the Human Rights Committee (the Committee) in advance of the Committee's preparations to draw up its List of Issues for the United Kingdom of Great Britain and Northern Ireland (hereafter the United Kingdom or UK), at the 112th session of the Committee to be held in October 2014. In this letter, Amnesty International sets out its concerns about the implementation of the International Covenant on Civil and Political Rights (ICCPR) by the UK. The organization will provide a more comprehensive submission in advance of the 114th session in July 2015 when the Committee will review the UK's seventh periodic report.

Accountability for deaths, torture and serious injuries in Northern Ireland – Arts 2, 6, and 7

In July 2008, the Committee recommended that the United Kingdom establish or conduct "independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland".¹ In the years since the Committee's concluding observations, successive Secretaries of State for Northern Ireland have refused to establish public inquiries, either under the Inquiries Act 2005 or on a non-statutory basis, into several incidents that led to the loss of life at the hands of state officials, armed groups, or in circumstances which have involved the collusion of state actors.

The systemic failure to ensure accountability for violations of the right to life in Northern Ireland is well demonstrated by the case of Patrick Finucane. In this case, the UK government had promised an inquiry in accordance with the conclusions of the Cory Collusion Inquiry. In spite of this commitment, the UK government has refused to establish an independent, public inquiry, opting instead to set up a document-based review in which the Finucane family did not have confidence.²

In September 2013, Amnesty International published a report entitled *Northern Ireland: Time to Deal with the Past*.³ The report concluded that the patchwork system of investigation—made up of the

¹ Human Rights Committee, Concluding Observations on the UK, CCPR/C/GBR/C0/6, July 2008, para. 6.

² *United Kingdom/Northern Ireland: Still no public inquiry twenty-five years after the killing of Patrick Finucane*, AI Index: EUR 45/003/2014, 12 February 2014, <http://www.amnesty.org/en/library/info/EUR45/003/2014/en>

³ *Northern Ireland: Time to deal with the Past*, AI Index: EUR 45/004/2013/, available at: <http://www.amnesty.org/en/library/info/EUR45/004/2013/en>

Historical Enquiries Team, the Office of the Police Ombudsman for Northern Ireland, coroner's inquests, public inquiries and criminal investigations by the Police Service of Northern Ireland—that has been established in Northern Ireland is not fit for the purpose of comprehensively and systematically addressing past human rights violations and abuses, including violations of the right to life and the prohibition against torture.⁴ The fragmented and incremental approach to establishing the truth and providing victims with remedy - all too often subject to protracted legal disputes, inadequate disclosure and resultant delay at several stages - has exacerbated the lack of a shared public understanding and recognition of the violations and abuses committed by all sides.

A related issue is the lack of investigations into life-threatening attacks and torture or other ill-treatment by both state and non-state actors.⁵ Estimates of the number of victims during the three decades of political violence range between 8,000 and 100,000. Many of the existing mechanisms for accountability currently exclude “the injured” owing to the mechanisms’ limited mandates.

Between September and December 2013, the Northern Ireland Executive organized inter-party talks, on a number of contentious issues, chaired by an independent external chair, the former US diplomat Dr Richard Haass. The results of the talks were inconclusive at the time the Chair published a draft proposal at the end of the talks in December 2013. On the issue of “dealing with the past”, however, the draft proposal in general provided a solid basis from which to proceed with efforts to deliver truth and justice for victims and their families. Amnesty International has urged the Northern Ireland political parties and the UK government to take them forward through legislation. In particular, the proposal to establish a Historical Investigations Unit (HIU) and an Independent Commission for Information Retrieval (ICIR) has the potential to advance efforts to secure truth and justice for victims of human rights violations and abuses, although some work still needs to be done to ensure these mechanisms operate in full compliance with ICCPR.⁶

Amnesty International reiterates its recommendation that the UK government establish a single mechanism capable of ensuring that all allegations of human rights violations and abuses committed in the past are investigated in a prompt, impartial, independent, thorough and effective manner; and to ensure that any such mechanism is able to investigate overall patterns of abuse, policy and practice of state and non-state actors, identify those responsible at all levels and issue recommendations aimed at securing victims’ right to effective remedy and reparation. Such a mechanism should provide truth, justice and reparations for all those who suffered torture or other ill-treatment or were seriously injured during the three decades of political violence, and who have to date been largely excluded from the mandates of existing accountability mechanisms. Further, the UK government should reform the Inquiries Act 2005 to ensure the independence of future inquiries, and establish an independent public inquiry into the killing of Patrick Finucane. Amnesty International also calls on the UK government and the Northern Ireland Executive to work toward agreement on the Haass proposals to deal with the past.

Use of UK territory for rendition flights and involvement of UK authorities in torture and other ill-treatment of people detained overseas in the context of counter-terrorism operations – Arts 2 and 7

⁴ Some of these concerns are reflected in the following documents by other organizations: “Joint Submission by the Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC) in relation to the supervision of cases concerning the action of the security forces in Northern Ireland, February 2012; “An inspection of the Office of the Police Ombudsman for Northern Ireland”, report by the Criminal Justice Inspectorate, September 2011 and its follow-up report: “The independence of the Office of the Police Ombudsman for Northern Ireland: A follow-up review of inspection recommendations”, January 2013.; Her Majesty’s Inspectorate of Constabulary, Inspection of the Police Service of Northern Ireland Historical Enquiries Team, 3 July 2013, and on the case of Patrick Finucane: Amnesty International press release “De Silva report makes strongest case yet for full inquiry into Finucane killing”, 13 December 2012, and public statement, “United Kingdom/Northern Ireland: Deplorable government decision to renege on promise of public inquiry into Finucane killing” AI Index EUR 45/017/2011, 13 October 2011.

⁵ For a detailed explanation of the differential treatment or exclusion of these victims, see pages 51-55 of *Northern Ireland: Time to deal with the Past*, AI Index: EUR45/004/2013/, available here; <http://www.amnesty.org/en/library/info/EUR45/004/2013/en>.

⁶ For a detailed analysis of the human rights compliance of two accountability mechanisms (the HIU and the ICIR) proposed in the draft document published following the conclusion of the inter-party talks, please see *United Kingdom/Northern Ireland: Haass proposals on dealing with the past*, EUR 45/001/2014, 5 February 2014, <http://www.amnesty.org/en/library/info/EUR45/001/2014/en>.

The UK government and intelligence agencies have faced a growing number of allegations, including in claims brought in domestic courts by individual victims and as a result of investigative work by NGOs and journalists, of involvement in human rights violations of people detained overseas since 11 September 2001. The allegations include involvement in torture and other ill-treatment, arbitrary detentions, enforced disappearance, and renditions of individuals detained overseas in the context of counter-terrorism operations.

In spite of the Committee's prior recommendation that the UK "investigate allegations related to transit through its territory of rendition flights [...]"⁷, to date, no genuinely independent, public inquiry has been established into that and other related allegations of UK involvement in serious human rights violations of people detained overseas in the context of counter-terrorism operations.

In July 2010, the UK Prime Minister David Cameron announced that he would establish an inquiry (which was later named the 'Detainee Inquiry') into the allegations of involvement of members of the UK intelligence services and other officials in torture and other human rights violations. One year later, on 6 July 2011, the UK government confirmed the terms of reference and protocol for the Detainee Inquiry.⁸ Amnesty International raised concerns that the protocol did not meet international human rights standards because the government would have retained the final say over disclosure of material relating to national security, which was very broadly defined. This government control over disclosure led to criticism that such executive power would undermine the Inquiry's independence and effectiveness.⁹ In August 2011, Amnesty International and nine other NGOs wrote a letter to the Solicitor to the Detainee Inquiry stating that, given the Inquiry's shortcomings, the NGOs would not cooperate with it.¹⁰ Lawyers acting for the individuals who have alleged that they were tortured or otherwise ill-treated also advised their clients that they should not participate in an Inquiry that lacked independence. In January 2012, following further revelations about UK involvement in renditions to Libya and subsequent criminal investigations by the UK police, the UK Justice Secretary announced that the Detainee Inquiry was not capable of completing its task and that it should be closed.¹¹

In December 2013, a report on the Detainee Inquiry's preparatory work was published, after significant delay. The report set out lines of investigation for any future Inquiry to explore in greater detail.¹² The UK government announced that the matters raised by the Detainee Inquiry's report would be addressed by the Intelligence and Security Committee (ISC) of the UK Parliament, rather than by an independent, public inquiry. The ISC is yet to begin its inquiry, however, it has previously failed to fully investigate – or was not provided adequate information to fully investigate – prior allegations of torture and other ill-treatment and rendition in the context of counter-terrorism and national security. Despite some changes to the powers of the ISC following the enactment of the Justice and Security Act 2013, the government still retains the right to withhold information from the ISC where material is considered to be "sensitive" or on grounds of national security (Schedule 1 (4)(5)), and retains the right to exclude material "prejudicial to the continued discharge of the functions [of the intelligence agencies]" (Section 3.4) from publication in any report by the ISC. The UK government's position to date has been that "it would not be possible to initiate an inquiry while related police investigations continue,"

⁷ CCPR/C/GBR/CO/6, para. 13.

⁸ These documents, published on 6 July 2011, are available to download directly from the Detainee Inquiry's website: <http://www.detaineeinquiry.org.uk/2011/07/news-release-terms-of-reference-and-protocol-published/>. For the formal ministerial statement, see Hansard, 6 July 2011, Column 100WS: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110706/wmstext/110706m0001.htm#11070675000064>.

⁹ *United Kingdom: Detainee Inquiry terms of reference and protocol fall far short of human rights standards*, AI Index EUR 45/011/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>.

¹⁰ *UK: Joint NGO letter to the Solicitor to the Detainee Inquiry*, AI Index EUR 45/010/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/010/2011/en>.

¹¹ The formal ministerial statement can be found in Hansard, 18 January 2012, Column 751-760, <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debtext/120118-0001.htm>. See also Statement by Chairman of the Detainee Inquiry, 18 January 2012, <http://www.detaineeinquiry.org.uk/2012/01/statement-by-the-chairman-of-the-detainee-inquiry/>; and UK: Detainee Inquiry closure presents an opportunity for real accountability, AI Index EUR 45/005/2012, 18 January 2012, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>.

¹² The full report can be downloaded here: <http://www.detaineeinquiry.org.uk/2013/12/report-of-the-detainee-inquiry/>. For Amnesty International's response to the report's publication, see *UK: Decision to hand torture inquiry to intelligence committee strongly criticised*, Press Release PRE01/667/2013, 19 December 2013, <http://www.amnesty.org/en/for-media/press-releases/uk-decision-hand-torture-inquiry-intelligence-committee-strongly-criticised> and United Kingdom: Joint NGO letter regarding the parliamentary Intelligence and Security Committee's examination of allegations of UK complicity in torture and other ill-treatment of detainees held overseas, AI Index EUR 45/005/2014, 7 April 2014, <http://amnesty.org/en/library/info/EUR45/005/2014/en>.

but that “the Government has left open the question of whether there should be a further judge-led inquiry pending the outcome of the [ISC’s] follow up work”.¹³

In November 2010, the UK Justice Secretary announced financial payments to 16 UK nationals or residents as part of a mediated settlement of civil damages claims brought by individuals previously detained in Guantánamo Bay. The terms of the settlement remain confidential. In response to these civil damages claims, the Detainee Inquiry, and related litigation, the UK parliament enacted the Justice and Security Act 2013, which will be addressed in further detail below.

Amnesty International finds it of utmost importance that any new inquiry initiated by the UK should be in line with its obligations under Articles 2 and 7 of the ICCPR, and that it should avoid the many deficiencies of the Detainee Inquiry.¹⁴

Expansion of closed material procedures to civil claims for damages, including those resulting from torture and other ill-treatment – Arts 2, 7 and 14

A number of provisions in the Justice and Security Act 2013¹⁵ undermine the right to an effective remedy and limit, on national security grounds, the ability of victims of human rights violations to seek disclosure of material pertaining to those violations in domestic courts. This legislation was introduced as a direct response to the civil claims described above, brought by a number of individuals who have alleged UK involvement in their torture and other ill treatment, rendition and unlawful detention.

Previously, the use of closed material procedures was already applied to a wide range of proceedings, including national-security related deportation, asylum or deprivation of citizenship cases before the Special Immigration Appeals Commission (SIAC), High Court proceedings relating to administrative controls imposed on individuals suspected of involvement in terrorism-related activity (see separate section below), and employment tribunal proceedings involving national security concerns. The Justice and Security Act 2013 has further extended their use throughout the ordinary civil justice system, to cases which the government claims give rise to national security concerns.

Closed material - essentially a form of secret evidence - is information which the government claims would be damaging to national security if it were to be disclosed. A closed material procedure allows a court or tribunal to consider such material during a secret hearing, from which one party to the litigation and their lawyer is excluded. The party’s interests are instead represented by a Special Advocate who is not permitted to communicate with the individual concerned (except in very exceptional circumstances) once the advocate has reviewed the closed material. This material is withheld throughout the proceedings and in some cases may never be disclosed to the individual(s) whose interests are at stake, her/his lawyer of choice, and the public, none of whom has access to the closed hearing. Where a closed material procedure applies in a case, the court may also issue a closed judgment alongside an open one – the secret judgment is never given to the individual or her/his lawyer and remains entirely hidden from public view.

Amnesty International has long criticized the use of closed material procedures in the UK, as they undermine basic standards of fairness and open justice.¹⁶ Lawyers who have spoken with Amnesty International have made it clear that they face profound difficulties in representing their clients effectively where a closed material procedure applies, raising serious questions about how such procedures can achieve any meaningful equality of arms between the parties. Special Advocates – who sit at the heart of this secret justice system – have also publicly stated that closed material procedures “are inherently unfair; they do not ‘work effectively’, nor do they deliver real procedural fairness.”¹⁷

¹³ Letter from William Hague, Secretary of State for Foreign and Commonwealth Affairs to Amnesty International, 4 May 2014.

¹⁴ For a detailed analysis of the deficiencies of the Detainee Inquiry, please see AI Index: EUR 45/011/2011

¹⁵ Justice and Security Act 2013, available at: http://www.legislation.gov.uk/ukpga/2013/18/pdfs/ukpga_20130018_en.pdf.

¹⁶ For further information see *Left in the Dark: The use of secret evidence in the United Kingdom*, AI Index: EUR 45/014/2012, October 2012.

¹⁷ Special Advocates submission to the Justice and Security Green Paper, January 2012.

Whilst in principle there may be reasonable justifications for not disclosing all information in legal proceedings, for example, where such disclosure would endanger the lives or safety of identifiable individuals, this cannot justify the provision of a blanket claim to secrecy for the intelligence agencies, as the Act provides. All measures used to restrict fair trial guarantees based on national security grounds must be fully compliant with other obligations under ICCPR. Intelligence material, as with other types of sensitive material, must be subject to possible disclosure if a court determines that it contains evidence of human rights violations such as secret detention, torture or other ill-treatment

Amnesty International is deeply concerned that by allowing the government to rely on secret evidence during a civil claim for damages, the Justice and Security Act fundamentally undermines the right of victims of human rights violations such as torture and other ill-treatment to have access to a fair and effective procedure for establishing their claims and obtaining an effective remedy. The reliance on secret evidence also allows the government to avoid scrutiny and criticism of its human rights record. In short, neither the concealment of evidence of human rights violations on purported grounds of national security, or reliance by the government on secret evidence of any kind, has any legitimate place in proceedings in which a remedy for such violations is sought.

Accountability for torture and other ill-treatment and unlawful killings by UK armed forces in Iraq, and extraterritorial application of human rights protections – Arts 2, 6, 7

British armed forces were present in Iraq from March 2003 to May 2009, when they were largely based in and around the southern city of Basra.¹⁸ British armed forces have been found responsible (notably by the Baha Mousa Inquiry¹⁹) for torture and other ill-treatment of detainees in some instances, and other allegations of violations of international human rights and international humanitarian law during their six year presence in Iraq persist.²⁰ To date, however, only one low-ranking soldier is known to have been convicted by the UK authorities for inhuman treatment of detainees.²¹ The UK government still faces hundreds of legal claims by Iraqis who allege that they were subject to abuses by British troops and has reportedly paid out millions of pounds to settle claims made by Iraqi complainants, although often without admitting liability.²² Allegations also persist about UK Special Forces personnel handing over detainees to US custody at Camp Nama notwithstanding having witnessed or otherwise being personally aware of torture and ill-treatment there in 2003 and 2004.²³

Amnesty International considers the many claims of torture, other ill-treatment and unlawful killing that Iraqis have made against the British military to be sufficiently numerous and credible to warrant the establishment of a single, independent, public inquiry by the UK government.²⁴ Such an inquiry should be tasked to investigate the alleged violations, assess the degree to which they were systemic, apportion responsibility at all relevant levels and ensure accountability, including through criminal

¹⁸ The UK was recognized as an occupying power in Iraq from May 2003 until June 2004, but UK combat troops remained in the country with the agreement of the new Iraqi authorities until May 2009.

¹⁹ The three full volumes of the Baha Mousa Inquiry report can be accessed here: <http://webarchive.nationalarchives.gov.uk/20120215203912/http://www.bahamousainquiry.org/report/index.htm>; for Amnesty International's response to the publication of the Inquiry report, see *United Kingdom: Justice must follow as Baha Mousa Inquiry makes damning findings against UK armed forces*, AI Index EUR 45/016/2011, 9 September 2011.

²⁰ These mounting allegations are all the more relevant to the Committee's examination in light of CCPR/C/GBR/CO/6, para. 14: "The Committee is disturbed about the State party's statement that its obligations under the Covenant can only apply to persons who are taken into custody by the armed forces and held in British-run military detention facilities outside the United Kingdom in exceptional circumstances. It also notes with regret that the State party did not provide sufficient information regarding the prosecutions launched, the sentences passed and reparation granted to the victims of torture and ill-treatment in detention abroad."

²¹ At least four other members of the UK armed forces were court-martialed and convicted of offences in connection with the so-called Breadbasket incident of May 2003 involving mistreatment and photographs of Iraqi looters. See: <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GBR.5.doc>

²² Ian Cobain, "MoD pays out millions to Iraqi torture victims," *The Guardian*, 20 December 2012, <http://www.guardian.co.uk/law/2012/dec/20/mod-iraqi-torture-victims> and Rosa Silverman, "MoD pays out £14m in compensation to Iraqis over torture claims," *The Telegraph*, 21 December 2012, <http://www.telegraph.co.uk/news/uknews/defence/9759919/MoD-pays-out-14m-compensation-to-Iraqis-over-torture-claims.html>

²³ Ian Cobain, "Camp Nama: British personnel reveal horrors of secret US base in Baghdad", *The Guardian*, 1 April 2013, <http://www.guardian.co.uk/world/2013/apr/01/camp-nama-iraq-human-rights-abuses>

²⁴ For further detail in the specific inquiries, please refer to *Iraq: A decade of abuses*, MDE 14/001/2013, 11 March 2013, <http://www.amnesty.org/en/library/info/MDE14/001/2013/en>, Section 6.3 on the United Kingdom.

prosecutions. It should allow for meaningful victim participation and recommend measures, including reparations, to provide effective redress to victims and to prevent future repetition of such violations.

To date, however, the UK authorities have responded in an incremental and individualized manner to attempts to secure accountability for alleged human rights violations by British forces in Iraq. This has been largely through settling civil claims (without admitting liability) made by individual victims, their families and legal representatives and responses to requests made under the Freedom of Information Act.

Amnesty International is concerned that the UK continues to take a narrow view of the extraterritorial application of its international human rights obligations, thereby undermining human rights protection and obstructing efforts by victims to obtain an effective remedy for human rights violations.²⁵ For example, with respect to military operations overseas, the UK has emphasized that although its armed forces are required to comply with the absolute prohibition against torture as set out in the ICCPR and other international and regional human rights instruments, it has denied that the broader obligations and protections under ICCPR, such as those in article 7 to prevent acts of torture, apply extraterritorially.²⁶

Terrorism Prevention and Investigation Measures Act 2012 – Arts 9, 14

The administrative restrictions under the Prevention of Terrorism Act 2005 (PTA) known as ‘control orders’ were replaced in 2012 by similar restrictions set out in the Terrorism Prevention and Investigation Measures Act (TPIM Act)²⁷. This Act provides for a new regime of administratively-ordered restrictions (TPIMs) to be placed on individuals suspected of involvement in terrorism-related activities. Although slightly less stringent than those applied under the PTA control orders regime and subject to a maximum two-year limit, restrictions imposed under TPIMs could still amount to a deprivation of liberty or constitute restrictions on the rights to privacy, association, expression and movement.

In its concluding observations in 2008, the Committee expressed concern about the control order regime and its conformity with articles 9 and 14 of ICCPR. The Committee emphasised the adverse impact that the use of closed material proceedings has on the equality of arms of the parties to a case in proceedings where the imposition of control orders may be challenged.²⁸ The imposition of TPIMs continues to be possible through judicial proceedings which are based on closed material procedures. The TPIM Act also provides for an ‘enhanced’ version of TPIMs, which could be introduced in the future, in exceptional circumstances which have not been adequately defined. In these cases, the most severe restrictions that were previously available under the PTA control orders regime may still be imposed.

The deficiencies of the PTA control order regime with respect to equality of arms remain inherent in the TPIM regime.

Detention of people suspected of terrorism-related activity – Arts 9, 14

²⁵ The UK has attempted to limit the extent to which the European Convention on Human Rights applies to the actions of its armed forces abroad, arguing strenuously in two cases heard by the European Court of Human Rights – namely *Al-Skeini (Al-Skeini and others v United Kingdom)* [Grand Chamber], application no. 55721/07, 7 July 2011) and *Al-Jedda (Al-Jedda v United Kingdom)* [Grand Chamber], application no. 27021/08, 7 July 2011) – that protections of the Convention should not apply to UK forces in Iraq. These arguments were rejected by the Court, which in both cases found that the Convention applied to the actions of the UK forces in Iraq.

²⁶ In the UK’s report to the Committee Against Torture, received by that Committee on 6 September 2011, the UK explicitly stated that it “does not consider that the Convention Against Torture applies extra-territorially” (CAT/C/CGBR/5, page 27 para. 119). The UK also recently rejected a recommendation by Nicaragua during the UPR process that the UK “Recognize the extra-territorial application of the CAT, according to its jurisprudence”, on the grounds that “The Committee Against Torture is not a judicial body and consequently neither its Reports or General Comments have the status of jurisprudence” and that “the UK takes an Article by Article approach to the Convention Against Torture, given that there is no single jurisdictional provision”. (See “The UK’s Universal Periodic Review – Annex document - September 2012” UN Doc A/HRC/21/9 Add.1)

²⁷ Terrorism Prevention and Investigation Measures Act 2011, <http://www.legislation.gov.uk/ukpga/2011/23/contents/enacted>

²⁸ Human Rights Committee, Concluding Observations on the UK, CCPR/C/GBR/CO/6, July 2008, para. 17.

In 2008, the Committee called on the State to “ensure that any terrorist suspect arrested [...] be promptly informed of any charge against him or her and tried within a reasonable time or released.”²⁹ In January 2011, the maximum period of pre-charge detention in terrorism cases was reduced from 28 to 14 days following a review of counter-terrorism and security powers by the Home Office. The Protection of Freedoms Act,³⁰ which came into force in May 2012, not only retains the 14-day limit, but it also allows the maximum period to be raised back to 28 days in response to an unspecified “urgent” situation that could arise in the future.³¹ Such undefined situations of “urgency” undermine notions of legal certainty and give the government wide power to define an urgent situation as it sees fit.

Continuing reliance on Diplomatic Assurances to deport foreign nationals – Art 7

The UK has sought and continues to seek diplomatic assurances from foreign governments in its attempts to deport a number of individuals, alleged to pose a threat to the UK’s national security, to states where they could not be deported because of the real risk of torture and other ill-treatment they would face upon return. To date the UK has concluded ‘memorandums of understanding’ (MoUs) with the governments of Lebanon, Jordan, Libya,³² Ethiopia and Morocco. After the UK tried and failed to secure a MoU with the Algerian authorities, the UK and Algerian government agreed to negotiate bilateral assurances for humane treatment and fair trial on a case-by-case basis.

The use of diplomatic assurances for deportations of foreign nationals on grounds of national security does not provide an effective safeguard against torture and other ill-treatment. Amnesty International research and analysis have demonstrated that such assurances are inherently unreliable and legally unenforceable.³³ As a result they put individuals who are deported on this basis at risk of abuse with no remedy. No system of post-return monitoring of individuals will render assurances an acceptable alternative to rigorous respect for the absolute prohibition of transfers to risk of torture or other ill-treatment.³⁴

The absolute prohibition on deporting, extraditing or otherwise transferring any person to a country where he or she will face a real risk of being subjected to torture or other ill-treatment incorporates the obligation to provide individuals with access to a fair and effective procedure. Such a procedure must originate with or include judicial review, so that the individual concerned can raise a claim of such risks and have it adjudicated. Reliance on secret material in appeal proceedings against orders for deportation on “national security” grounds, which take place before the Special Immigration Appeals Commission (SIAC), renders the process profoundly unfair.

SIAC permits the government to rely on secret evidence, including intelligence material, to support its argument that the assurances will be effective and the individual concerned would not be at risk of torture and other ill-treatment on return. Such material can include further detail regarding the government’s assessment about conditions prevailing in the country in question or can relate to the personal circumstances of the individual concerned which may affect risk on return. The use of secret information, considered in secret sessions of the court from which the appellants and their legal representatives have been excluded, is particularly concerning when individuals are deported to countries where they are at risk of torture or other ill-treatment. The use of such evidence essentially

²⁹ Human Rights Committee, Concluding Observations on the UK, CCPR/C/GBR/CO/6, July 2008, para. 15.

³⁰ Protection of Freedoms Act 2012, Part 4, <http://www.legislation.gov.uk/ukpga/2012/9/part/4/enacted>

³¹ Protection of Freedoms Act, part 58.

³² In April 2007 the Court of Appeal of England and Wales upheld a prior decision of the SIAC allowing the appeals of two Libyan nationals against their deportations on the grounds that the assurances from the Libyan government were not sufficient to protect the men from a real risk of torture or other ill-treatment. See *DD and AS v Secretary of State for the Home Department*, [2008] EWCA Civ. 289, 9 April 2008.

³³ See in particular *Dangerous Deals: Europe’s reliance on ‘diplomatic Assurances’ against torture*, AI Index: EUR 01/012/2010, 12 April 2010, <http://www.amnesty.org/en/library/info/EUR01/012/2010>.

³⁴ The Committee against Torture has previously expressed concern about the use of diplomatic assurances and has recommended that a ‘State party refuse to accept diplomatic assurances in relation to extraditions of persons from its territory to States where those persons would be in danger of being subjected to torture since those assurances cannot be an instrument to modify a determination of a possible violation of article 3 of the Convention.’ (CAT/C/CZE/CO/4-5)

ties the hands of the person subject to deportation; an individual cannot challenge effectively the government's claim that there is no risk because that person cannot review all the relevant evidence.³⁵

Amnesty International maintains its call to the UK government to halt the use of diplomatic assurances in cases where they are used to justify the transfer of an individual to a place where he or she would be at risk of human rights violations such as torture and other ill-treatment. Moreover, the SIAC should not permit the government to submit information in secret on the risk of return, but should allow the person subject to deportation on national security grounds to review -- and thus effectively challenge -- relevant information related to his or her risk of human rights violations such as torture and other ill-treatment on return.

Surveillance and interception of communications – Arts 17 and 19

In June 2013, disclosures made by a former NSA contractor, Edward Snowden, about the nature and extent of surveillance activities by the UK intelligence agency Government Communication Headquarters (GCHQ) and its US counterpart the National Security Agency (NSA), raised serious concerns regarding those states' respect for the right to privacy, and other human rights, notably the right to freedom of expression.³⁶ The revelations largely related to three secret surveillance programmes: PRISM (run by the US government's NSA to obtain internet communications from US internet providers); UPSTREAM (direct interception by the NSA as communications passed through the US); and Tempora (direct interception by the GCHQ as communications pass out of or into the UK).³⁷ The revelations included that the UK government receives information from the US that is obtained through PRISM and UPSTREAM.

The Regulation of Investigatory Powers Act (RIPA) 2000, the primary piece of legislation governing surveillance by public authorities in the UK, does not provide sufficient safeguards to ensure that such surveillance is authorized and carried out in conformity with the right to privacy and in a way that protects the right to freedom of expression. It has also proven itself to be woefully outdated in light of technological advances.

There is an absence of adequate legislative controls or safeguards in UK law for the receipt, analysis, use and storage of data received from foreign intelligence agencies that have been obtained by interception. As recently noted by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, there is a lack of adequate judicial oversight and scrutiny of surveillance activities in the UK.³⁸ In addition to this, the jurisdiction of the Investigatory Powers Tribunal (IPT) is restricted to determining complaints referred to them by members of the public. Since the granting of external communications warrants are not disclosed, individuals are not in a position to challenge them before this tribunal. Finally, the UK legislative framework as it stands allows for the possibility of executive interference with the Intelligence and Security Committee, the parliamentary oversight body.³⁹

Partly in response to a decision by the European Court of Justice,⁴⁰ the government introduced in July 2014 a new Data Retention and Investigatory Powers (DRIP) Act as a piece of fast-tracked emergency

³⁵ See Amnesty International's report, *Left in the Dark: The use of secret evidence in the United Kingdom*, AI Index: EUR 45/014/2012, October 2012.

³⁶ In December 2013, Amnesty International submitted a legal complaint to the UK's Investigatory Powers Tribunal challenging the mass interception of/ interference with communications by the UK intelligence and security agencies. The complaint argues that the activities of the UK agencies are in breach of the UK government's human rights obligations, principally the rights to private and family life and freedom of expression.

³⁷ For further detail see, amongst others, "NSA Prism program taps in to user data of Apple, Google and others", Glenn Greenwald and Ewen MacAskill, *The Guardian*, 7 June 2013; "GCHQ taps fibre-optic cables for secret access to world's communications", *The Guardian*, 21st June 2013; "UK gathering intelligence via covert NSA operation", Nick Hopkins, *The Guardian*, 7 June 2013. See also the Joint Application by Big Brother Watch and others to the European Court of Human Rights, accessible at: https://www.privacynotprism.org.uk/assets/files/privacynotprism/496577_app_No_58170-13_BBW_ORG_EP_CK_v_UK_Grounds.pdf.

³⁸ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 17 April 2013, UN Doc: A/HRC/23/40, § 54.

³⁹ For further discussion of these issues, see, for example, Amnesty International UK response to the Justice and Security Green Paper, January 2012.

⁴⁰ *Digital Rights Ireland Ltd (C-293/12) v Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, Commissioner of the Garda Síochána, Ireland, and The Attorney General*, 8 April 2014, <http://curia.europa.eu/juris/document/document.jsf?docid=150642&doclang=EN>

legislation.⁴¹ Besides concerns about the rushed nature of the legislative process used to pass this legislation, which precluded proper consultation and Parliamentary scrutiny, the Act, among other measures, dramatically extends the reach of UK's interception powers under RIPA by providing potentially wide-ranging extraterritorial effects to UK interception warrants.

Amnesty International therefore calls for urgent reform to the laws governing surveillance, to ensure that any interference with the right to privacy comply with the human rights principles of legality, necessity and proportionality, are properly authorized, and are subject to adequate judicial and parliamentary scrutiny.⁴²

Criminalization of abortion and lack of access to safe abortion in Northern Ireland – Art 2, 3, 6, 7

Northern Ireland imposes the harshest criminal penalty in abortion regulation across Europe. This Committee and various other UN treaty bodies have consistently called on state parties to amend legislation criminalizing abortion in order to withdraw punitive measures imposed on women who undergo abortion and to liberalize restrictive criminal regulation laws and to ensure access to lawful abortion.⁴³ In contravention of international standards, Northern Ireland's law continues to deny abortion in cases to protect the health of the pregnant woman, and in cases of rape and incest in fatal foetal impairment.⁴⁴ The Northern Ireland Department of Justice is, however, about to embark on a process of legislative consultation for access to abortion in cases of rape and fatal foetal impairment.

This Committee has described criminal regulation as exerting a deterrent or "chilling" effect, and suggested that such criminal laws may violate the right to life. State failure to positively ensure effective access to lawful abortion and post-abortion care is also interpreted as a violation of women's rights to life and health.⁴⁵

⁴¹ The full text of the Data Retention and Investigatory Powers Act 2014 and related legislative documents can be accessed here:

<http://services.parliament.uk/bills/2014-15/dataretentionandinvestigatorypowers/documents.html>. As regards the extraterritorial application of the ICCPR in relation to digital surveillance, see Amnesty International and the American Civil Liberties Union's joint submission to US Privacy and Civil Liberties Oversight Board (March 19, 2014, <http://www.amnestyusa.org/sites/default/files/recommendationsforhumanrightslawandussurveillancepractices.pdf>) and Amnesty International's submission to OHCHR (General Assembly Resolution 68/167: Submission to Office of the High Commissioner for Human Rights on Surveillance and the Extraterritorial Application of Human Rights, AI Index ACT 30/003/2014, April 2014, <http://www.amnesty.org/en/library/info/ACT30/003/2014/en>), as well as the Report of the Office of the United Nations High Commissioner for Human Rights, "The right to privacy in the digital age," paras 31 to 36 http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf.

⁴² See Amnesty International submission to the ISC privacy and security inquiry, AI Index: EUR 45/002/2014, 7 February 2014, (not currently online, a copy can be provided to the Committee if required).

⁴³ CEDAW Gen. Rec. No. 24, para. 31(c). See also Concluding Observations of the CEDAW Committee: Andorra, para. 48, U.N. Doc. A/56/38 (2001); Concluding Observations of the CEDAW Committee: Belize, para. 57, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee: Burkina Faso, para. 276, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Cameroon, para. 60, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Ireland, para. 186, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee: Jordan, para. 181, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Namibia, Part II para. 127, U.N. Doc. A/52/38/Rev.1 (1997); Concluding Observations of the CEDAW Committee: Nepal, paras. 139 and 148, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee: United Kingdom, para. 310, U.N. Doc. A/55/38 (1999). See e.g., Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia, para. 43, U.N. Doc. E/C.12/1/Add.60 (2001); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mauritius, para. 15, U.N. Doc. E/C.12/1994/8 (1994); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal, paras. 32 and 55, U.N. Doc. E/C.12/1/Add.66 (2001); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland, para. 29, U.N. Doc. E/C.12/1/Add.82 (2002); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal, paras. 26 and 47, U.N. Doc. E/C.12/1/Add.62 (2001). See Concluding Observations of the Human Rights Committee: Ecuador, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); Concluding Observations of the Human Rights Committee: Kenya, para. 14, U.N. Doc. CCPR/CO/83/KEN (2005); Concluding Observations of the Human Rights Committee: Paraguay, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); Concluding Observations of the Human Rights Committee: Poland, para. 8, U.N. Doc. CCPR/CO/82/POL (2004); Concluding Observations of the Human Rights Committee: Trinidad and Tobago, para. 18, U.N. Doc. CCPR/CO/70/TTO (2000).

⁴⁴ Human Rights Committee, Communication No. 1153/2003, K.L. v Peru, U.N. Doc. CCPR/C/85/D/1153/2003; Human Rights Committee, LMR v Argentina CCPR/CO/70/ARG, para. 14.

⁴⁵ Concluding Observations of the Human Rights Committee: Argentina, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000). See also Concluding Observations of the Human Rights Committee: Venezuela, para. 19, CCPR/CO/71/VEN (2001); Concluding Observations of the Human Rights Committee: Guatemala, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001); Concluding Observations of the Human Rights Committee: Mauritius, para. 9, U.N. Doc. CCPR/CO/83/MUS (2005); Concluding Observations of the Human Rights Committee: Guatemala, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001); Concluding Observations of the Human Rights Committee: Kuwait, para. 16, U.N. Doc. CCPR/CO/69/KWT, A/55/40 (2000); Concluding Observations of the Human Rights Committee: Lesotho, para. 11, U.N. Doc. CCPR/C/79/Add.106 (1999); Concluding Observations of the Human Rights Committee: Trinidad and Tobago, para. 18, U.N. Doc. CCPR/CO/70/TTO (2000); Concluding Observations of the Human Rights Committee: United Republic of Tanzania, para. 15, CCPR/C/79/Add.97 (1998).

Women in Northern Ireland, unlike those in the rest of the United Kingdom, cannot access abortion services where they live; in order to access such services, they have to travel to another part of the UK or overseas and to do so at their own expense.

Further information is available in the documents that are referred to in the appendix of this letter. Please do not hesitate to contact me should you need any further information.

Yours sincerely,



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International Advocacy Programme

For further information please see the following Amnesty International documents:

On accountability for deaths, torture and serious injuries in Northern Ireland

- Northern Ireland: Those who condoned or authorized use of torture must be held accountable, Press Release, 5 June 2014, <http://www.amnesty.org/en/for-media/press-releases/northern-ireland-those-who-condoned-or-authorized-use-torture-must-be-held>
- Amnesty International statement to joint committee briefing and hearing: “The Northern Ireland peace process today: attempting to deal with the past”, AI Index: EUR 45/007/2014, 11 March 2014, <http://www.amnesty.org/en/library/info/EUR45/007/2014/en>
- Amnesty International statement to the Oireachtas joint committee on the implementation of the Good Friday Agreement : Time to deal with the past in Northern Ireland, EUR 45/006/2014, 5 March 2014, <http://www.amnesty.org/en/library/info/EUR45/006/2014/en>
- United Kingdom/Northern Ireland: Administrative scheme for “on the runs” must not perpetuate impunity, AI Index: EUR 45/004/2014, 28 February 2014, <http://www.amnesty.org/en/library/info/EUR45/004/2014/en>
- United Kingdom/Northern Ireland: Still no public inquiry twenty-five years after the killing of Patrick Finucane, AI Index: EUR 45/003/2014, 12 February 2014, <http://www.amnesty.org/en/library/info/EUR45/003/2014/en>
- United Kingdom/Northern Ireland: Haass proposals on dealing with the past, AI Index: EUR 45/001/2014, 5 February 2014, <http://www.amnesty.org/en/library/info/EUR45/001/2014/en>
- Northern Ireland: Time to deal with the past, AI Index: EUR 45/004/2013, 12 September 2013, <http://www.amnesty.org/en/library/info/EUR45/004/2013/en>
- United Kingdom/Northern Ireland: A new step by the High Court in the case of Patrick Finucane, Press Release, AI Index: PRE01/017/2012, 13 January 2012, <http://www.amnesty.org/en/for-media/press-releases/united-kingdom-northern-ireland-new-step-high-court-case-patrick-finucane-20>
- United Kingdom/Northern Ireland: Deplorable government decision to renege on promise of public inquiry into Finucane killing, AI Index: EUR 45/017/2011, 13 October 2011, <http://www.amnesty.org/en/library/info/EUR45/017/2011/en>
- United Kingdom/Northern Ireland: Inquiry into the killing of human rights defender and lawyer Rosemary Nelson finds serious omissions by state agencies, AI Index: EUR 45/006/2011, 24 May 2011, <http://www.amnesty.org/en/library/info/EUR45/006/2011/en>

On the use of UK territory for rendition flights and involvement of UK authorities in torture and other ill-treatment of people detained overseas in the context of counter-terrorism operations

- United Kingdom: Joint NGO letter regarding the parliamentary Intelligence and Security Committee's examination of allegations of UK complicity in torture and other ill-treatment of detainees held overseas, AI Index EUR 45/005/2014, 7 April 2014, <http://www.amnesty.org/en/library/info/EUR45/005/2014/en>

- UK: Decision to hand torture inquiry to intelligence committee strongly criticised, Press Release PRE01/667/2013, 19 December 2013, <http://www.amnesty.org/en/for-media/press-releases/uk-decision-hand-torture-inquiry-intelligence-committee-strongly-criticised>
- Libyan rendition case shows it's time for UK to come clean, News Story, 18 April 2012, <http://www.amnesty.org/en/news/libyan-rendition-case-shows-it-s-time-uk-come-clean-2012-04-18>
- UK: Detainee Inquiry closure presents an opportunity for real accountability, EUR 45/005/2012, 18 January 2012, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>
- United Kingdom: Detainee Inquiry terms of reference and protocol fall far short of human rights standards, EUR 45/011/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>
- UK: Joint NGO letter to the Solicitor to the Detainee Inquiry, EUR 45/010/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/010/2011/en>
- UK: Joint NGO letter to the Secretary to the Detainee Inquiry, EUR 45/003/2011, February 2011, <http://www.amnesty.org/en/library/info/EUR45/003/2011/en>
- UK: Joint NGO Submission to Chair of the Detainee Inquiry, EUR 45/002/2011, February 2011, <http://www.amnesty.org/en/library/info/EUR45/002/2011/en>
- NGOs call for effective UK torture inquiry, 14 September 2010, <http://www.amnesty.org/en/news-and-updates/ngos-call-effective-uk-torture-inquiry-2010-09-14>
- UK: Joint letter re: Inquiry into alleged UK involvement in the mistreatment of detainees held abroad, EUR 45/016/2010, 14 September 2010, <http://www.amnesty.org/en/library/info/EUR45/016/2010/en>
- United Kingdom: Disclosed documents further demonstrate urgent need for an effective inquiry into the UK's role in the torture and ill-treatment of detainees held in overseas custody, EUR 45/011/2010, 15 July 2010, <http://www.amnesty.org/en/library/info/EUR45/011/2010/en>
- UK torture inquiry must be independent and thorough, 7 July 2010, <http://www.amnesty.org/en/news-and-updates/uk-torture-inquiry-must-be-independent-and-thorough-2010-07-07>
- United Kingdom: Proposed torture inquiry must be independent, impartial and thorough, EUR 45/005/2010, 24 May 2010, <http://www.amnesty.org/en/library/info/EUR45/005/2010/en>
- United Kingdom: Time for an inquiry into the UK's role in human rights violations overseas since 11 September 2001, EUR 45/001/2010, 23 March 2010, <http://www.amnesty.org/en/library/info/EUR45/001/2010/en>

On the expansion of closed material procedures to civil claims for damages, including those resulting from torture and other ill-treatment

- United Kingdom: Left in the dark: The use of secret evidence in the United Kingdom, AI Index: EUR 45/014/2012, 15 October 2012, <http://www.amnesty.org/en/library/info/EUR45/014/2012>
- United Kingdom: Submission to the Joint Committee on Human Rights: The Justice and Security Green Paper, AI Index: EUR 45/006/2012, January 2012, <http://www.amnesty.org/en/library/info/EUR45/006/2012/en>
- United Kingdom: Court of Appeal rules that secret procedures violate fair trial rights in civil proceedings, AI Index: EUR 45/003/2010, 5 May 2010, <http://www.amnesty.org/en/library/info/EUR45/003/2010/en>

On accountability for torture and other ill-treatment and unlawful killings by UK armed forces in Iraq, and extraterritorial application of human rights protections

- Iraq: A decade of abuses, MDE 14/001/2013, 11 March 2013, <http://www.amnesty.org/en/library/info/MDE14/001/2013/en>, Section 6.3 on the United Kingdom
- United Kingdom: Justice must follow as Baha Mousa Inquiry makes damning findings against UK armed forces, AI Index EUR 45/016/2011, 9 September 2011, <http://www.amnesty.org/fr/library/info/EUR45/016/2011/en>

On the Terrorism Prevention and Investigative Measures Act, and antecedent legislative powers

- United Kingdom: Terrorism Prevention and Investigation Measures Bill: Control orders redux, EUR 45/007/2011, 30 June 2011, <http://www.amnesty.org/en/library/info/EUR45/009/2011/en>

- United Kingdom: Submission for the review of counter-terrorism and security powers, EUR 45/015/2010, 6 September 2010, <http://www.amnesty.org/en/library/info/EUR45/015/2010/en>
- United Kingdom: Five years on: Time to end the control orders regime, EUR 45/012/2010, 12 August 2010, <http://www.amnesty.org/en/library/info/EUR45/012/2010/en>

On detention of people suspected of terrorism-related activity

- United Kingdom: Submission to the Joint Committee on the draft Detention of Terrorist Suspects (Temporary Extension) Bills, EUR 45/004/2011, 21 April 2011, <http://www.amnesty.org/en/library/info/EUR45/004/2011/en>

On continuing reliance on diplomatic assurances to deport foreign nationals

- European Court of Human Rights: Major Decision on Deportation to Torture, AI Index: EUR 45/002/2012, 16 January 2012, <http://www.amnesty.org/en/library/info/EUR45/002/2012/en>
- UK: European Court Ruling Sends Mixed Message on Torture: Amnesty International, Human Rights Watch & Justice joint statement, AI Index: EUR 45/004/2012, 18 January 2012, <http://www.amnesty.org/en/library/info/EUR45/004/2012/en>
- UK: Abu Qatada still at risk of torture and unfair trial, AI Index: EUR 45/010/2012, 9 May 2012, www.amnesty.org/en/library/info/EUR45/010/2012/en
- Dangerous Deals: Europe's reliance on 'Diplomatic Assurances' against torture, EUR 01/012/2010, 12 April 2010, <http://www.amnesty.org/en/library/info/EUR01/012/2010/en>

On surveillance and interception of communications

- Submission to Office of the High Commissioner for Human Rights on Surveillance and the Extraterritorial Application of Human Rights, AI Index: ACT 30/003/2014, April 2014, <http://www.amnesty.org/en/library/info/ACT30/003/2014/en>
- Amnesty International and American Civil Liberties Union, Joint submission to US Privacy and Civil Liberties Oversight Board, March 19, 2014, <http://www.amnestyusa.org/sites/default/files/recommendationsforhumanrightslawandussurveillancepractices.pdf>
- Amnesty International submission to the ISC privacy and security inquiry, AI Index: EUR 45/002/2014, 7 February 2014, (not currently online, a copy can be provided to the Committee if required)
- United Kingdom: Submission to the Joint Committee on Human Rights: The Justice and Security Green Paper, AI Index: EUR 45/006/2012, January 2012, <http://www.amnesty.org/en/library/info/EUR45/006/2012/en>