



Follow-up regarding Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the UK

Introduction

This follow-up shadow report is submitted jointly by the three United Kingdom 'A status' accredited National Human Rights Institutions ('the UK NHRIs') in response to the interim State report submitted to the Committee Against Torture ('the Committee') in June 2014¹. The Equality and Human Rights Commission (EHRC) is the NHRI for England and Wales and Scottish matters that are reserved to the UK Parliament. The Scottish Human Rights Commission (SHRC) has jurisdiction with respect to matters that are devolved to the Scottish Parliament. The Northern Ireland Human Rights Commission (NIHRC) has jurisdiction in relation to Northern Ireland.

The purpose of this report is to update the Committee on developments in relation to issues raised in its concluding observations from the examination of the United Kingdom's compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in May 2013.² We have not addressed every issue on which the Committee has sought interim information but have focussed on those about which we have relevant information.

¹ CAT/C/GBR/CO/5/Add.1, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5%2fAdd.1&Lang=en

² CAT/C/GBR/CO/5, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en

Inquiries into allegations of complicity in torture overseas

The Committee recommends that the State party establish without further delay an inquiry on alleged acts of torture and other ill-treatment of detainees held overseas committed by, at the instigation of or with the consent or acquiescence of British officials. The State Party should ensure that the new inquiry is designed to satisfactorily address the shortcomings of the Detainee Inquiry, identified by a broad range of actors. In this regard, the Committee encourages the State party to give due consideration to the report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/19/61). The State party should ensure that all perpetrators of torture and ill treatment identified in the context of the inquiry are duly prosecuted and punished appropriately, and that effective reparation, including adequate compensation, is granted to every victim. Furthermore, the Committee urges the State party to speedily publish the content of the interim report of the Detainee Inquiry to the fullest extent possible. (Paragraph 15 of the Concluding Observations)

As the Committee is well aware, the UK Government decided to conclude the Detainee Inquiry in January 2012,³ before it had formally launched, due to the commencement of criminal investigations into the rendition of individuals to Libya.⁴ A report of the preparatory work undertaken by Sir Peter Gibson's Inquiry was subsequently published, which highlights eight issues where further detailed investigation is required.⁵

Despite committing itself to another independent, judge-led inquiry once the criminal investigations had concluded, the UK Government subsequently referred the matter to the Intelligence and Security Committee of Parliament to:

- inquire into the eight issues raised by the Detainee Inquiry;
- take further evidence; and

³ Statement made by the Justice Secretary to the House of Commons, Hansard HC, col 752, 18 January 2012, available at: <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debtext/120118-0001.htm>

⁴ Joint Statement by the Director of Public Prosecutions and the Metropolitan Police Service, 12 January 2012, available at: <http://content.met.police.uk/News/Joint-statement-by-MPS-and-DPP/1400005902978/1257246741786>

⁵ Report of the Detainee Inquiry, 19 December 2013, available at: http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf

- report to the UK Government and Parliament on the outcome of its inquiry.⁶

The UK Government will then consider whether a public inquiry is still warranted. The EHRC has recommended that the originally promised independent, judge-led inquiry is required to reaffirm the UK's reputation for strict adherence to international human rights standards.

Thus, while the UK Government has accepted the credibility of a number of allegations of complicity of British military personnel, security and secret intelligence services in the ill-treatment of detainees overseas, its investigations into these allegations have not, to date, satisfied the investigative duty under Articles 2 and 3 of the European Convention on Human Rights, nor its obligations under the Convention Against Torture.

On June 2013 the Lord Advocate announced a police inquiry in Scotland into the claims of 'extraordinary rendition' flights landed in Scottish airports. The SHRC has been informed that an interim report has been sent to the Crown Office and Procurator Fiscal Service in Scotland. The SHRC has for some time now been demanding an official investigation into this issue, including the adequacy of the Government response in light of the State's obligations under the Convention, particularly to ensure that systemic issues are identified and lessons learnt.

The UK NHRIs therefore consider steps are required to improve the UK Government compliance with its international obligations, including in particular that a full, independent, judge-led inquiry should be carried out in place of the ISC's investigation into the issues raised in the Detainee Inquiry Report with terms of reference that comply with the investigative duty arising under Articles 2 and 3 ECHR.

Accountability for abuses in Iraq

The Committee urges the State party to take all necessary measures to establish responsibilities and ensure accountability, including setting up a single, independent public inquiry to investigate allegations of torture and cruel, inhuman or degrading treatment or punishment in Iraq from 2003

⁶ Statement to the House of Commons by the Minister without Portfolio, 13 December 2013, available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131219/debtext/131219-0002.htm>

to 2009. In accordance with the Committee's general comment No. 3 (2012) on implementation of article 14 by States parties, the State party should also ensure that all victims of torture, cruel, inhuman or degrading treatment obtain redress and are provided with an effective remedy and reparation, including restitution, fair and adequate financial compensation, satisfaction and appropriate medical care and rehabilitation. (Paragraph 16 of the Concluding Observations)

The UK Government accepts that some of the allegations of British military personnel involvement in the torture and ill-treatment of civilians and detainees in Iraq are credible. It established the Iraq Historic Allegations Team (IHAT) in 2010, which is currently investigating at least 169 different allegations, from a total of around 1,000 allegations.⁷

Regrettably, the progress in investigating all of these allegations has been very slow. The IHAT has completed investigations into only eight cases, and has ordered only one fine against a British soldier.⁸

The UK NHRIs do not believe this is consistent with the prompt investigative duty under Articles 2 and 3 of the ECHR, (as confirmed by the European Court of Human Rights in its *Al Skeini* judgment) and the UK Government's obligations under Article 12 of the UN Convention Against Torture.⁹

In May 2013, the High Court ruled a different approach was required for cases that engage the investigative duty under Article 2 of the ECHR because the investigatory process as it was then constituted, was insufficient to discharge fully that obligation.¹⁰ Accordingly, it ordered that, in relation to a number of cases, an inquisitorial process modelled on coronial inquests should be established at the conclusion of the service police investigations. However, the Court considered that the procedure adopted by the IHAT, for the purpose of investigating alleged violations of Article 3 ECHR is "a more than proportionate performance" of the State's

⁷ More information about the Iraq Historic Allegations Team is available here: <https://www.gov.uk/government/groups/iraq-historic-allegations-team-ihat>

⁸ MoD. IHAT Work Completed as at 16 May: <https://www.gov.uk/government/publications/ihat-work-completed>

⁹ *Al Skeini v. United Kingdom*, available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-105606>
EHRC intervention in *R(Ali Zaki Mousa and others v. Secretary of State for Defence [2010] EWHC 3304 (Admin)* available at:

<http://www.bailii.org/ew/cases/EWHC/Admin/2010/3304.html>

¹⁰ *R(Ali Zaki Mousa and others v. Secretary of State for Defence No. 2 [2013] EWHC 1412 (admin)* available at: <http://www.judiciary.gov.uk/judgments/azm-others-v-sos-defence/>

duties, subject to making the inquiry accessible to the family and the public, and considering the issues of timeliness and delay. To date, eleven quasi-inquests have been ordered, and guidelines have been issued by the Lord Chief Justice as to how those proceedings should be conducted. Preparatory work on the first of these coronial-style fatality investigations began towards the end of 2013. A retired High Court judge was appointed in January 2014 as Inspector to supervise the first two cases. It is expected these two cases will be completed by autumn 2014.

In addition the Al-Sweady Public Inquiry was established to investigate allegations that British soldiers unlawfully killed and ill-treated Iraqi nationals detained at Camp Abu Naji and, subsequently, the divisional temporary detention facility at Shaibah Logistics Base, after the so-called Battle of Danny Boy. Lawyers for the Iraqi core participants have agreed that there is insufficient evidence to submit that anyone was unlawfully killed. However, the allegations of mistreatment remain, and the Inquiry report is currently being written.¹¹

The UK NHRIs recommend that further reforms are needed of the way in which these allegations are being investigated, not only to avoid further unacceptable delays in the resolution of individual cases, but also to ensure that systemic issues are identified and lessons learnt.

Deportations to Sri Lanka

The Committee recommends that the State party observes the safeguards to ensure respect for the principle of non-refoulement, including consideration of whether there are substantial grounds indicating that an asylum-seeker might be in danger of torture or ill-treatment upon deportation to his or her country of origin. The Committee calls upon the State party to conduct a thorough risk assessment of situations covered by article 3 of the Convention, notably by taking into consideration evidence from Sri Lankans whose post-removal torture claims were found credible, and revise its country guidance accordingly. (Paragraph 20 of the Concluding Observations)

The UK NHRIs note that the State party's follow up report states that Country Guidance has been updated and notes that permission had been

¹¹ More information about the Al-Sweady Public Inquiry is available here: <http://www.alsweadyinquiry.org/>

granted for two of the appellants in the in the case of *GJ & Others* to appeal to the Court of Appeal.¹² The Commissions advise that the Court of Appeal has now delivered judgment in this case. The Court held that the Country Guidance was legally sound, although their analysis of the Country Guidance against the UN High Commissioner for Refugees Guidelines 2012 (UNHCR Guidelines) found that the UNHCR Guidelines "*are indeed less demanding [on applicants] than the [UK guidance].*"¹³

The UK NHRIs note that the Court further ruled that the parties to the appeal and interveners had:

*"identified a potential risk category which is not protected by [the UK Guidelines]"*¹⁴ [namely] "(1) individuals who did not give evidence to the Lessons Learned and Reconciliation Commission but wish to give evidence to any future inquiry or investigation and (2) individuals who may never give such evidence but who may wish to speak out about egregious conduct witnessed by them – whether for therapeutic, political or other personal reasons".¹⁵

The UK NHRIs suggest that the Committee may wish to consider the revised country guidance in the light of those findings.

Transitional Justice in Northern Ireland

The Committee recommends that the State party develop a comprehensive framework for transitional justice in Northern Ireland and ensure that prompt, thorough and independent investigations are conducted to establish the truth and identify, prosecute and punish perpetrators. In this context, the Committee is of the view that such a comprehensive approach, including the conduct of a public inquiry into the death of Patrick Finucane, would send a strong signal of its commitment to address past human rights violations impartially and transparently. The State party should also ensure that all victims of torture and ill-treatment are able to obtain adequate redress and reparation.

Neither EHRC nor SHRC has any remit in Northern Ireland, so the comments that follow in this section are from the NIHRC only.

¹² *GJ and Others* (post – civil war returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)

¹³ *MP (Sri Lanka) and another v Secretary of State for the Home Department* [2014] EWCA Civ 829, para 16.

¹⁴ *Ibid*, para 38.

¹⁵ *Ibid*, para 36.

The NIHRC has raised awareness of the Committee's concluding observation on transitional justice in Northern Ireland and the obligations of the State Party arising therefrom.

In 2013, the NIHRC published the report 'Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach'.¹⁶ Reflecting views similar to the Committee's recommendation, the report found that:

*Among those consulted, many called for a more holistic approach to transitional justice in Northern Ireland. The absence of any centralised oversight or co-ordination of transitional justice efforts was felt both to impede those trying to make advances in this area, and to contribute to the public perception that little was being done. Experts, victims, and others stressed the need for a medium to long term strategy on these issues, in contrast with the current ad hoc approach to policy and funding.*¹⁷

The NIHRC notes that the State Party's response does not directly address the Committee's recommendation. Rather, the submission outlines measures that are already in place and largely operate independently of each other. In the Commission's original submission to the Committee it identified concerns that have arisen regarding each of the processes that have been developed to investigate conflict related deaths.¹⁸

Speaking in relation to one of these processes, the Historical Enquiries Team, a former Northern Ireland Police Chief Constable recently stated:

*The Police Service of Northern Ireland could not deliver the peace process single handed. What failed to happen was a more holistic approach that Eames- Bradley advocated - of which the HET could have been a part. It was never going to be the totality of the solution.*¹⁹

In relation to the possibility of holding public inquiries pursuant to the Inquiries Act 2005,²⁰ the Commission has maintained the view that this Act makes it impossible to set up truly independent inquiries by virtue of

¹⁶ NIHRC, 'Dealing with Northern Ireland's Past: Towards a Transitional Justice Approach', 31 July 2013.

¹⁷ *Ibid*, para 53.

¹⁸ Northern Ireland Human Rights Commission Submission to the United Nations Committee Against Torture Parallel Report on the 5th Periodic Report of the United Kingdom under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2013 para 8.7.

¹⁹ UTV Live 'HET was created to fail - Hugh Orde', Published Friday, 08 August 2014

²⁰ Follow-up submission provided by the UK Government in response to the Concluding Observations adopted by the Committee Against Torture on the 5th periodic report of the United Kingdom of Great Britain and Northern Ireland, para. 30.

an unprecedented subordination of the inquiry process to the control of Government ministers at every stage, even though the actions of the Executive may be the very subject of the investigation.²¹ The NIHRC recalls that Sir Desmond de Silva in the report of his review into State involvement in the murder of Patrick Finucane found that: "*agents of the State were involved in carrying out serious violations of human rights up to and including murder*".²² The Prime Minister has indicated that there will not be a further independent inquiry into the murder of Mr. Finucane.²³ Inquiries into other deaths examined by Judge Peter Cory have now concluded.

The NIHRC has consistently advised the UK Government and Northern Ireland Executive of the obligation to carry out effective official investigations into cases engaging the right to life and the right to freedom from torture, inhuman or degrading treatment. In 2013 the Northern Ireland Attorney General stated that there should be "*no more inquests and no more prosecutions with respect to Troubles-related deaths*".²⁴ In responding to this call the NIHRC stated: "*In dealing with the past' there can be no deviation from the rule of law*".²⁵

The Commission notes that in September 2014 the Chief Constable of the Police Service of Northern Ireland (PSNI) criticised the "absence of a holistic approach to dealing with our past" and made clear "the significant strain that the current piecemeal approach to our history is placing on the [PSNI]." The Chief Constable explained that the status quo is not an option and that:

to continue to ignore, hesitate or procrastinate on the past will have unpredictable and far reaching consequences. If our own politicians cannot reach consensus on the issue, then it would seem appropriate and necessary to seek and accept much more "hands

²¹ NIHRC Correspondence to the UN Human Rights Committee, 24 August 2009

²² Rt Hon Sir Desmond de Silva, 'The Pat Finucane Review' 2012, available at: <<http://www.patfinucanereview.org/report/index.html>>.

²³ Prime Minister David Cameron statement on Patrick Finucane 12/10/2012 available at: <<https://www.gov.uk/government/speeches/prime-minister-david-cameron-statement-on-patrick-finucane--2>>. The family of Mr Finucane have sought to judicially review this decision. See Finucane's (Geraldine) Application [2013] NIQB 45.

²⁴ BBC News Northern Ireland, *NI attorney general John Larkin calls for end to Troubles prosecutions*, 20 Nov 2013. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-24999051>. See also, BBC News Northern Ireland, *PSNI: Matt Baggott urges inquiry curb on Troubles Murders*, 27 June 2014. Available at: <http://www.bbc.co.uk/news/uk-northern-ireland-28049602>; Newsletter, *Hamilton agrees with Baggott: Take Troubles cases from PSNI*, 7 July, 2014. Available at: <http://www.newsletter.co.uk/news/regional/new-psni-chief-hamilton-agrees-with-baggott-take-troubles-cases-from-psni-1-6162122>.

²⁵ NIHRC 'NIHRC responds to Attorney General's comments on dealing with the past' <http://www.nihrc.org/news/detail/nihrc-responds-to-attorney-generals-comments-on-dealing-with-the-past>

on" support from the British and Irish Governments; and indeed other interested and influential observers of our peace process.²⁶

The Commission advises the Committee that 20 years after the IRA and Loyalist Paramilitary ceasefires and 16 years after the 1998 Belfast (Good Friday) Agreement, several paramilitary organisations continue to operate actively in NI. The statistics below illustrate that consequent violence related to the security situation in NI continues to affect the people of NI today:²⁷

Year	Bombing Incidents	Shooting Incidents	Casualties as a result of paramilitary style shootings	Casualties as a result of paramilitary style assaults	Deaths Due to the Security Situation
2004/05	48	167	93	116	4
2005/06	81	156	76	76	6
2006/07	20	58	26	48	4
2007/08	23	42	7	45	1
2008/09	46	54	20	41	5
2009/10	50	79	46	81	2
2010/11	99	72	33	50	1
2011/12	56	67	33	46	1
2012/13	44	64	27	36	2
2013/14	69	54	28	42	1

In follow up to its July letter, the Commission advises that the independent review of the administrative scheme to deal with 'on-the-runs' has concluded and Lady Justice Hallett has issued her report.²⁸

The NIHRC advises that the Committee's recommendation remains outstanding. We would request that the Committee continue follow up on this issue in light of ongoing developments in order to provide impetus towards progress.

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²⁶ Chief Constable of the Police Service of Northern Ireland, Speech at British-Irish Association conference, *Dealing with the Future by Dealing with the Past*, 6 September 2014, available at: http://www.psni.police.uk/index/news-archive/news-2014/september_2014/pr_chief_constable_s_speech_at_british-irish_association_conference_060914.htm

²⁷ PSNI, Police Recorded Security Situation Statistics, Monthly Update; Covering the 12 month period 1st September 2013 -31st August 2014, 16 September, 2014. Available at: http://www.psni.police.uk/security_situation_statistics_to_august_2014.pdf.

²⁸ See Hallett Review online report at <http://www.hallettreview.org/chapter/conclusions/conclusions-legal-issues/>