

Ms Kate Fox
Secretary
UN Human Rights Committee
Office of the United Nations
High Commissioner for Human Rights
UNOG-OHCHR
1211 Geneva 10, Switzerland

25/07/2014

**RE: United Kingdom of Great Britain and Ireland – ADOPTION OF LIST OF ISSUES BY THE
COMMITTEE AGAINST TORTURE**

Dear Ms Fox,

Rights Watch (UK) would like to provide information to the Human Rights Committee (the Committee) in advance of the Committee's preparations to draw its list of issue prior to reporting for the United Kingdom (UK). Rights Watch (UK) is concerned that since the Human Rights Committee's report in 2008 that there has been little progress made implementing the recommendations made by the Committee in its concluding observations in (2009).

We have outlined our concerns below with reference to the appropriate International Covenant on Civil and Political Rights (ICCPR) articles.

Article 2

We note that the UK has not yet ratified the Optional Protocol to the ICCPR as recommended by the Committee in its concluding observations in 2008¹. We believe that the need for this ratification is increasing as political parties in the UK have expressed the desire to consider withdrawing from the European Convention on Human Rights. Such a withdrawal would significantly inhibit international oversight of UK human rights compliance by removing the only avenue for individual petition overseas.

Rights Watch is concerned that there is insufficient oversight of and accountability for UK Government counter terrorism activities both domestically and abroad. Accordingly, persons whose rights are violated in this context are unable to access an effective remedy as required by Article 2. The following are some of our key concerns:

- 1) Access to an effective remedy is severely restricted by the failings of the Investigatory Powers Tribunal (IPT) which has jurisdiction to hear complaints about the conduct of the intelligence services and the use of surveillance powers by public bodies . Individuals

¹ Concluding Observations of the Human Rights Committee on the UK, 2008, para 6

seeking to challenge infringements of their human rights that fall within its remit are directed towards this body. We believe that the Investigatory Powers Tribunal does not provide an effective remedy for the purposes of Article 2 of the ICCPR. This body does not have sufficient independence from the Government as its membership is appointed by a Government Minister. Its rules and remit are defined by the Secretary of State, who also has responsibility for the Security Services and for authorising covert activity. It has no obligation to give reasons for its actions or to hold hearings in public. Criticisms of the IPT have been echoed by the British Courts (Chris here is the link to the judgment <http://www.bailii.org/ew/cases/EWCA/Civ/2013/1342.html> please put in the citation and mention that relevant references are on paras 54 onwards). For these reasons we do not believe that persons who have complaints against the activities of the security services both within the UK and abroad (and other bodies that fall within the jurisdiction of the IPT) are able to access an effective remedy.

- 2) The UK Government's position on the jurisdictional scope of the convention also gives rise to concerns about access to an effective remedy in the context of UK Government counter terrorism operations abroad. Counter terrorism operations are usually done in concert with other state/non-state actors who 'control' the individual in question. Accordingly, the UK would not view such persons to fall within the jurisdictional reach of the ICCPR nor other international conventions such as the ECHR.
- 3) Access to an effective remedy in the context of counter terrorism operations abroad is also being threatened by the Government's current proposals to introduce a residency test that excludes those with "little or no connection to this country" from receiving support for civil legal actions in England and Wales. Given that some of those who are subject to UK counter terrorism operations are not British citizens or residents and do not reside in the UK, they will be precluded from being an action against the Government should the reforms be instituted.
- 4) Access to an effective remedy in the context of counter terrorism operations abroad is also limited by judicial unwillingness to sit in judgment of the acts of a foreign state. This issue recently arose in the case of *Noor Khan v Secretary of State for Foreign and Commonwealth Affairs* [2014] EWCA Civ 24. In this case the claimant issued judicial review proceedings against a decision by the UK Government to provide intelligence to the US authorities for use in drone strikes in Pakistan, among other things. The judicial review was refused on the basis that claims involved serious criticisms of a foreign state, in this case the US.
- 5) Access to an effective remedy is also limited by the Governments unwillingness to hold independent, effective, thorough and impartial investigations into allegations of complicity in unlawful counter terrorism activities abroad. For example, the Government has proved unwilling to establish independent judicial inquiries to investigate allegations of unlawful activity in the context of CT operations despite publically committing to holding an inquiry led by a judge who is "fully independent of Parliament, party and Government" into allegations that Britain was implicated in the improper treatment of detainees, held by other

countries, that may have occurred in the aftermath of 9/11. The Inquiry that was eventually set, under the Chair of Sir Peter Gibson, was severely limited in its powers and gave the Government the final decision on whether material could be made public (the protocol did not provide for an independent mechanism to decide on disclosure of national security material). The Inquiry was eventually suspended because of ongoing criminal investigations but questions remain as to whether the criminal investigations could not have run concurrently with the Inquiry, on the assumption that the latter did not deal with the specific allegations raised in the criminal cases. The Parliamentary Intelligence and Security Committee (ISC) has now been tasked with examining the allegations of UK complicity in torture and other ill-treatment of detainees held overseas. This has been strongly criticized given the limitations inherent in the ISC's mandate and powers.

- 6) Access to an effective remedy can also be severely restricted when closed material procedures are used in civil proceedings pursuant to the Justice and Security Act 2013. If a closed material procedure is ordered, the applicant is prevented from seeing any information that is presented in closed, which in counter terrorism cases is quite extensive, and must rely on a special advocate who is appointed to represent their interests in the closed proceedings. There are significant limitations to this as the special advocate is restricted from communicating with the claimant once they become privy to the closed material. The compatibility of closed material procedures (albeit in the context of employment law cases) with the right to a fair trial is currently being considered by the European Court of Human Rights in the case of *Gulamhussein and Tariq* Application Nos 46538/11 and 3960/12. Closed material procedures also raise issues under Article 14 of the ICCPR.

Article 6

In Northern Ireland there continues to be a failure to provide adequate judicial processes for dealing with historical crimes and deaths, as recognised by the Committee in its concluding observations in 2008². The systems have been heavily criticised by the European Court of Human Rights in the McKerr³ group of cases, and the cases of McCaughey and Hemsworth⁴. Further the Council of Europe⁵ has added their criticism due to the non-implementation of the Court's judgements in these cases. Her Majesty's Inspectorate of Constabulary found that the Historical Enquiries Team was failing to properly investigate historical deaths related to state involvement in October 2013. There has been insufficient progress to remedy the failings highlighted at this time.

There continues to be a failure for the Government to ensure a full and public inquiry into the death of Patrick Finucane, a lawyer and human rights defender, in 1989 despite an admission of State

² Concluding Observations of the Human Rights Committee on the UK, 2008, para 9

³ [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59451#{\"itemid\":\[\"001-59451\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59451#{\)

⁴ [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122371#{\"itemid\":\[\"001-122371\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122371#{\)

⁵ [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2014\)1201/25&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2014)1201/25&Language=lanEnglish&Ver=original&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679)

collusion in his death by the Prime Minister in December 2012⁶. We believe that it is necessary for there to be a full public Inquiry to give the family and public confidence that all those who were responsible for Patrick's death are held accountable for their actions, and that no senior officials are being protected by the UK Government

We are increasingly concerned that the Government has failed to learn lessons from the Finucane case and has once again legitimized and encouraged hostility towards those seeking to hold the UK Government to account particularly for abuses in conflict settings. Phil Shiner, a solicitor at Public Interest Lawyers (PIL), a law firm in the United Kingdom, has received death threats due to involvement in cases exposing acts of torture by UK armed forces. These threats have been sparked and fuelled by negative media stories⁷ which have been legitimised and encouraged by the former Defence Secretary⁸ and the Secretary of State for Justice⁹. These actions are unacceptable as politicians should not use the platform and privileges of Parliament to undermine and endanger individuals and organisations that seek to hold it to account for human rights abuses.

Art 10

Rights Watch (UK) is concerned about the lack of an all-female prison in Northern Ireland, thereby reducing the respect for the inherent dignity of the human person as stipulated in Article 10¹⁰. Ash House, Hyde Bank Wood Women's Prison is run at the same site as the Young Offenders Centre. As a result, female prisoners have been subject to verbal intimidation, limited access to services and facilities and overly restrictive security, mostly to address issues in the YOC.

Art 14

We continue to express concerns about the use of non-jury trials in Northern Ireland (NI) under the powers of the Justice and Security (NI) Act 2007. We share the concerns of the Committee expressed in paragraph 18 of its Concluding Observations to the UK in 2008. We are also concerned that the Government has attempted to use in camera procedures to hold an entire criminal trial in secret. Although this request has been denied by the Court of Appeal,¹¹ a significant amount of the trial will be held in camera reducing the defendant's access to justice and the protection of their rights under Article 14 of the Covenant. We are also concerned that the Government attempted to prevent any reporting of the existence of this trial as this prevents public scrutiny of the decision to hold a case in secret. The validity of a conviction under these measures cannot be adequately tested in the European Court of Human Rights as the UK Government has no obligation to disclose any information that was heard during the in camera portions of the trial.¹²

Articles 18 and 26

⁶ <https://www.gov.uk/government/speeches/prime-minister-david-cameron-statement-on-patrick-finucane--2>

⁷ <http://www.telegraph.co.uk/finance/newsbysector/industry/defence/10714335/As-we-denigrate-our-troops-lawyers-get-rich.html>

⁸ http://www.thesundaytimes.co.uk/sto/news/uk_news/Defence/article1409432.ece

⁹ <http://www.telegraph.co.uk/news/uknews/law-and-order/10777503/Chris-Grayling-We-must-stop-the-legal-aid-abusers-tarnishing-Britains-justice-system.html>

¹⁰ <http://www.cjini.org/CJNI/files/e9/e919ac2b-4e79-4a80-b1f6-fb753bea3444.pdf>

¹¹ <http://www.judiciary.gov.uk/wp-content/uploads/2014/06/guardian-v-ab-cd.pdf>

¹² <http://www.bailii.org/ew/cases/Misc/2014/10.html>

We are increasingly concerned by the increase in negative public attitudes towards Islam as identified in the Committee's 2008 concluding observations¹³. Little has been done by the Government to remedy this problem, instead inflammatory reports such as the one linked to the 'Trojan horse schools'¹⁴ affair have added to public fears. The Government has also increased tensions through its harassment of Muslim Non-Governmental Organisations¹⁵, including those involved with humanitarian work in Syria¹⁶. We are also concerned by the use of Schedule 7 Terrorism Act 2000 powers to disproportionately target Muslims¹⁷.

Please do not hesitate to contact us if you require additional information about any of these issues,

Yours sincerely,

Yasmine Ahmed
Director

¹³ Concluding Observations of the Human Rights Committee on the UK, 2008, para 16

¹⁴ <http://www.theguardian.com/politics/2014/jul/22/schools-face-curbs-extremism-birmingham-trojan-horse-affair>

¹⁵ <http://blogs.telegraph.co.uk/news/peteroborne/100279865/if-cage-has-broken-the-law-let-it-be-prosecuted-this-reeks-of-the-police-state/>

¹⁶ <http://www.thirdsector.co.uk/muslim-aid-charity-lodges-tribunal-appeal-against-charity-commission-inquiry/governance/article/1295245>

¹⁷ <https://www.gov.uk/government/statistics/operation-of-police-powers-under-the-terrorism-act-2000-quarterly-update-to-december-2013>