Ministry of Justice

Scott McPherson
Director, Law, Rights and International,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ
United Kingdom

T 020 3334 2494
E scott.mcpherson@justice.gsi.gov.uk

www.gov.uk/moj

Mr Fabián Omar Salvioli
Chairperson, Human Rights Committee
United Nations
Palais Wilson
52 rue des Pâquis
CH-1201
Geneva
Switzerland

6th July 2015

Dear Mr Salvioli,

Subject: Response to the Human Rights Committee – outstanding questions following the UK's UN International Covenant on Civil and Political Rights examination

I would like to take this opportunity to thank you for your excellent chairing of our recent examination, and also to acknowledge the Committee members' professional and expert approach to examining the Delegation.

The UK has always been strongly committed to the UN and the role it plays in the promotion and protection of human rights, and specialist examination is a key element of this.

During the course of the examination, we committed to providing additional information on a number of areas. The content of this letter is provided on behalf of the whole Delegation, and as such contains information from the UK Government, the Scottish Government and the Northern Ireland Executive.

Mr. Bouzid asked a question on Day 1 of the examination regarding children held overnight in police cells due to a lack of suitable alternate accommodation. I can advise that the law is clear that any child who is charged with an offence should not be held overnight in a police cell unless absolutely necessary. For example, there may be times when it is not possible for local authorities to provide appropriate accommodation, and children may need to be kept in police custody for either their protection or that of the public.

We also committed to providing Ms Waterval with access to statistics on the use of restraint, segregation and separation in the youth secure estate, and these are available at https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2013-to-2014

On Day 2, we ran out of time to provide the UK response to Mr Seetulsingh's questions about the numbers of people in immigration detention, and the length of periods spent in detention, and we would like to provide the following information in response.

At the end of December 2014, 3,462 people were in immigration detention, 24% higher than the number recorded at the end of December 2013 (2,796). The statistics did show an increase in those detained in Immigration Removal Centres, but the increase is entirely accounted for by a decrease in the number of those in prison detained under immigration powers.

Most people detained under immigration powers spend only short periods in detention. Of the 29,655 people who left detention in 2014, just over 80% (23,928) had been detained for up to 2 months and just over 63% (18,783) had been detained for less than 28 days.

Mr Seetulsingh also asked about the UK Government's response to the *Report of the Inquiry into the Use of Immigration Detention in the United Kingdom* by the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration.

We can advise that Her Majesty's Chief Inspector of Prisons already inspects against many of the issues that the inquiry has been considering. Service improvement plans responding to inspection recommendations are in place and being robustly monitored. We expect Stephen Shaw (former Prisons and Probation Ombudsman for England and Wales), who is leading the independent review of welfare in detention in immigration removal centres, to take account of the inquiry's findings in his review, where appropriate.

Mr Seetulsingh asked about the UK Government's response to the Court of Appeal decision on 26 June 2015 on the Detained Fast Track asylum appeal system, and on 2 July 2015 the Minister for Immigration made a written statement to the House of Commons. We have attached the link to this statement http://www.parliament.uk/documents/commons-vote-office/July%202015/2%20July/6-Home-Asylum.pdf

Finally, Mr Seetulsingh asked about a maximum time limit on immigration detention, observing that most Council of Europe countries have a defined time limit. We can advise that a statutory time limit for immigration detention is not necessary. A time limit would be arbitrary, taking no account of an individual's circumstances, and would serve only to encourage individuals to delay or frustrate immigration and asylum processes, including their lawful removal from the UK, in order to reach a point where they had to be released from detention. That would be incompatible with protecting our borders and maintaining an effective immigration control. There are no plans to change that position.

However, the exercise of the power to detain is not unlimited in scope. Detention must accord with the principles implied by domestic and relevant European court of Human Rights case law. The leading domestic case on limitations to detention is R v Secretary of State for the Home Department ex parte Hardial Singh which sets out the relevant principles.

Regarding the questions raised by the Committee members at the end of the examination, we are able to provide the following information.

We note Mr. Shany's interest into allegations about UK Special Forces at Camp Nama. We would re-iterate that it is a long standing policy of the UK Government not to comment on UK Special Forces. However, no distinction between regular and special forces is made for the purposes of Service Police investigations.

Mr Shany also asked about the number of prosecutions of service personnel which had taken place in relation to Iraq. It is not possible for the UK Government to provide comprehensive information regarding allegations of torture and ill-treatment made against UK forces in Iraq. Should such allegations be made against UK Forces most, if not all, are handled and recorded as criminal offences in accordance with section 42 of the Armed Forces Act 2006 (AFA 2006) rather than being recorded as ill-treatment or torture. Therefore, to provide the information requested would require each investigation to be examined in detail.

With regards to the Iraq Historical Allegations Team (IHAT) investigations, which commenced in 2010, these are complex and difficult and involve allegations of mistreatment and unlawful killing which are historic and where evidence has been degraded by both the difficulty in obtaining it and the time that has passed. There have been no prosecutions to date resulting from the IHAT investigations, but two cases have been referred to the Director of Service Prosecutions to consider whether to bring a prosecution. So far, ten further investigations have been completed which did not result in prosecution. The IHAT routinely publishes on the Internet information about the progress of its work and the outcome of its investigations.

We also noted that in your closing comments, you referred to the so called "Danny Boy" incident. We can advise that in December last year, Sir Thayne Forbes, the Al-Sweady Inquiry chairman, found the allegations that UK Forces tortured and murdered Iraqi nationals following the 14 May 2004 battle, and the vast majority of the allegations of ill-treatment, to be deliberate untruths. While his report did uphold a small number of allegations of ill-treatment, it characterized them as "relatively minor", and accepted that the Armed Forces have taken appropriate steps to correct virtually all of these since 2004. Consequently, the report made only nine recommendations, all of which have been accepted in principle. The Ministry of Defence has implemented in full four recommendations, and has partly implemented, or intends to implement, the other five.

Mr De Frouville asked for more detail in relation to the answer given concerning a change to the law on abortion in respect of pregnancy as a result of sexual crime in Northern Ireland. The Committee was told that no proposals were being progressed at this time to change the law in these circumstances because of the complexities of the issue. The Northern Ireland Department of Justice's consultation paper published in October 2014 (available at http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-abortion-2014.htm) sets out, in part 2 of the paper, the issues involved in seeking to change the law to allow for abortion when a woman has become pregnant following a sexual assault . The matters to be considered include, for example defining the sexual offences which would have to have been committed, whether it should be necessary to have made a complaint to the police, whether a police report should be required, and could this be managed within an early timescale. The Northern Ireland Department of Justice will continue to consider the issue of abortion in the case of sexual crime, but as noted any change to the law on abortion in Northern Ireland will require cross party consent in the Assembly.

Mr De Frouville also made observations about the Stormont House Agreement. He noted the role of the new Historical Investigations Unit to investigate individual cases but asked about a mechanism for a wider overview of conflict related deaths and the overall context. We can advise that the Stormont House Agreement also provides for the creation of a new Implementation and Reconciliation Group (IRG) to oversee themes, archives and information recovery. Any evidence base for patterns or themes should be referred to the IRG from any of the legacy mechanisms for investigating deaths. The IRG will have eleven members with an independent chair of international standing and representatives of the main political parties, as well as, the UK and Irish governments. After five years the IRG is to commission a report on themes from independent academic experts. Promoting reconciliation will underlie all of the work of the IRG.

Mr Seetulsingh asked about DNA retention in Northern Ireland and referred to the recent decision of the UK Supreme Court in the case of Gaughran v the Chief Constable 2015 [UKSC29]. Under the Criminal Justice Act (NI) 2013 (which is expected to come into force in October 2015) an adult person's DNA profile will only be retained indefinitely if he or she is convicted of an imprisonable offence. For other circumstances (for example, persons charged or arrested, but not convicted and juveniles) there are various prescribed retention periods. In the Gaughran case Lord Clarke said (paragraph 38 and 40) that "*I would hold that the balance struck by the Northern Irish authorities, and indeed in England and Wales is proportionate and justified… the benefits to the public of retaining the DNA profiles of those who are convicted are potentially very considerable and outweigh the infringement of the right of the person concerned".*

Ms Cleveland asked what procedures were in place for monitoring compliance with assurances provided under deportation with assurances (DWA). The UK Government has procedures for monitoring compliance with assurances for those countries to which it has returned (or sought to return) individuals under DWA arrangements. As the Committee is aware, in the case of Jordan, this is performed by the local human rights organisation, the Adaleh Centre. For Ethiopia, Morocco and Algeria, this role is undertaken by the Ethiopian Human Rights Commission (alongside other expert officials), the Moroccan Organization for Human Rights (OMDH) and the UK Embassy in Algiers respectively.

In the case of Algerian assurances, the British courts (particularly the Special Immigration Appeals Commission) have twice upheld the Embassy's role as part of the means by which the UK Government can verify that assurances are upheld.

Mr De Frouville asked for information on a recent case before the Investigatory Power Tribunal (IPT). The Tribunal made clear in its judgment of 22 June that any interception that occurred was lawful,

necessary and proportionate. We would caution against drawing conclusions from the IPT's ruling about the target of any such interception. A finding in favour of an individual or organisation does not necessarily mean that they themselves were the target; it could equally mean that they were simply in communication with a target. However we can neither confirm nor deny specifics relating to this or any other case.

Mrs Waterval asked about the risk of overseas domestic workers facing forced labour. We can advise that we have strengthened measures to stop abusive relationships between employers and their domestic workers being brought to the UK. We have replaced the standard contracts that are required by the UK's Immigration Rules for Overseas Domestic Workers to make them more explicit and extend them to a broader range of matters.

In addition, when an Overseas Domestic Worker visa is applied for, our visa caseworkers will firstly look to see that the employer has confirmed that they will pay at least the UK's National Minimum Wage, they then will consider the employer's intention to do so. We also require the employer to declare that the work of the Overseas Domestic Worker will not fall under an exemption in the UK's National Minimum Wage Regulations that was designed for au pairs living as part of a family.

We are piloting interviews of Overseas Domestic Workers when they apply for their visas. This is currently in progress for applications made in Africa and is intended to help UK Visas and Immigration identify abusive employment relationships.

Overseas Domestic Workers who are suspected to be victims of trafficking will be supported through the UK's National Referral Mechanism for victims of modern slavery. Where an individual is fearful of returning home, may need to remain in the UK for a longer period to recover, or is assisting the police with their enquiries, they can apply for discretionary leave in line with the EU trafficking directive. Following a grant of leave they would be able to work for any employer.

The Modern Slavery Act 2015 creates the right for Overseas Domestic Workers who have been confirmed as victims of modern slavery to apply for a six month visa allowing them to work in the UK.

Mr Vardzelashvili asked a question regarding the management of protest in Scotland. Responsibility for authorising marches and parades lies with Scotland's 32 individual local authorities and information on the average processing times for applications is not held centrally. It is likely that the average processing time will vary depending on the number of marches and parades each local authority deals with and the complexity of the applications. Local authorities have the power to waive the 28 day notification period to allow groups and organisations to respond quickly to current events. It is important to note that some applications, from organisations such as the Grand Orange Lodge of Scotland, may include a number of "feeder" and "return" parades as well as the main parade itself, which can make the planning process very complicated.

Any restrictions on marches and parades must take account of the fundamental rights contained in the European Convention on Human Rights, and the Scottish Government fully supports the important rights of freedom of speech, freedom to peacefully celebrate culture and freedom of peaceful assembly. However, these rights need to be balanced with the rights of communities in those areas affected by such events to go about their business and without fear for their safety.

Mr Bouzid and other Committee members raised the issue of how hate speech is tackled in the UK. The UK Government is fully committed to tackling all forms of hate crime and hate speech. We condemn hate speech in all its forms, and will not tolerate individuals or groups who spread hate, seek to divide us, and deliberately raise community fears and tensions.

The United Kingdom has in place one of the strongest legislative frameworks in the world to protect communities from hostility, violence and bigotry and we will keep it under review to ensure that it remains effective and appropriate in the face of new and emerging threats. This includes offences for inciting racial hatred, provided for by parts 3 and 3A of the Public Order Act 1986, specific racially and religiously aggravated offences, provided for by sections 28-32 of the Crime and Disorder Act 1998, and powers for the courts to increase the sentence of an offender where hostility based on the victim's race or religion was shown, provided for by sections 145 and 146 of the Criminal Justice Act 2003. The legislation

provides equal protection under the law for all ethnic and religious groups, and applies to crimes that are committed both offline and online, including through the media.

Ms Seibert-Fohr asked about the Criminal Justice and Public Order Act 1994, and the "right to silence". The UK Government regards defendants' right not to give evidence as important, and has no plans to require defendants to take the stand. But the exercise of this right may have certain implications. Under section 35 of the Criminal Justice and Public Order Act 1994, a court may draw an adverse inference from a defendant's silence at trial, only where the defendant fails to give evidence 'without good cause'.

It should be noted that the 1994 Act itself contains a number of procedural safeguards. It requires that the judge makes clear to the accused what the consequences of a failure to give evidence might be, and that the accused is not compelled to give evidence.

It also makes specific provision that a person shall not be convicted solely or mainly on the basis of an adverse inference from silence, and provides that a *prima facie* case must have been made against the accused before any inferences can be drawn. This is a practical measure that ensures conformity with the principle that the accused should not be convicted 'solely or mainly' on an inference from silence. Judges will, where necessary, give detailed directions depending on the nature of the evidence.

We are content, therefore, that the provisions of the Criminal Justice and Public Order Act 1994 do not infringe the right to silence of an accused person.

Finally, whilst our current position on the Covenant's Optional Protocol and extraterritorial application remain as stated in our response to the Committee's List of Issues, I would like to confirm that we have noted the Committee's keen interest in these areas and the arguments put forward by the members on these matters.

Yours sincerely,

Scott McPherson
Director of Law, Rights and International