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Excellency,

In my capacity as Rapporteur for Follow-up on Concluding Observations of the United Nations Committee Against Torture (CAT), I refer to the examination of the fourth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/67/Add.2), at its 624th and 627th meetings (CAT/C/SR.624 and 627), held on 17 and 18 November 2004. The Committee adopted its Concluding Observations (CAT/C/CR/33/3) in which it requested further comments by the Government of the United Kingdom in relation to the specific issues of concern listed in paragraphs 5 (d), (e), (f), (g), (h), (i), (j), and (l).

The Committee recalls its request, expressed in the final paragraph of its Concluding Observations, that the State party's next report be submitted by 2008. Noting that the State party has not, to date, filed its fifth periodic report, this note invites the State party to submit the report at its earliest opportunity. In order to maintain a regular dialogue on issues of mutual concern, therefore, the Committee takes this present opportunity to respond to the State party's provision of follow-up information and to identify concerns which remain live in the light of the information supplied and of intervening developments.

On behalf of the Committee, allow me to thank you for your constructive response (CAT/C/GBR/CO/4/Add.1, June 8, 2006) providing comments by Your Excellency's Government on those paragraphs identified in the follow up. The additional comment provided has assisted the Committee in its ongoing analysis of the specific issues of concern in question. There remain issues where, in the Committee's view, the responses do not fully respond to the Committee's concerns, or in respect of which intervening events have rendered incomplete. Accordingly, on behalf of the Committee as Rapporteur for Follow-up, I would be grateful for the supplementary clarification of Your Excellency's Government on the following outstanding matters, in order to amplify the information available to the Committee in its analysis of the progress made regarding implementation of these aspects of the Convention.

.../...

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**Paragraph 5(d):**

With regard to the Committee's recommendation in paragraph 5(d) of the Concluding Observations and the rights of detainees to contest the legality of evidence against them, the Committee welcomes the December 2005 decision of the House of Lords in the case of *A (FC) and others v Secretary of State for the Home Department* that, as a matter of law, evidence tainted by torture procured with complicity of the State party's officials is inadmissible in certification proceedings under Part IV of the Anti-Terrorism, Crime and Security Act. The Committee would however welcome the State party's clarification of whether it applies the same legal standard to (i) other cases before the Special Immigration Appeals Commission as well as to other proceedings before other courts and tribunals, and (ii) in cases where there is no issue of complicity of the State party's officials. Would the State party be willing to reflect in formal fashion, such as legislative incorporation or by undertaking to Parliament, an exclusionary rule covering these categories?

Furthermore, the State party's response makes clear its reliance on the special advocate system in vindicating detainees' rights in this respect (paragraphs 10-13). In its judgment of 19 February 2009 in *A et. Al. v. United Kingdom* (Application No. 3455/05), the European Court of Human Rights found this system insufficient in four cases to safeguard detainees' rights in legal proceedings. The Committee would be grateful for the State party's advice on how it intends to amend the special advocate system in order that fully effective legal representation can be guaranteed.

**Paragraph 5(e)**

Regarding your response to the Committee's recommendation in paragraph 5(e) in which you stated that the UK Government does not believe that Article 3 of the Convention is applicable to the transfer of detainees from physical custody by the UK in Iraq or Afghanistan to the physical custody of either the Iraqi authorities or the Afghan authorities, the Committee notes the intervening opinion of the House of Lords in *Al Skeini et al. v. Secretary of State for Defence* that the European Convention and Human Rights Act apply to persons in places of detention under British control abroad. In light of that statement of the law, the Committee would welcome the State party's clarification as to whether it now accepts that the non-refoulement obligation contained in article 3 of the CAT extends to detainees in its custody abroad.

**Paragraph 5(f)**

Regarding the Committee's recommendation in paragraph 5(f) that the UK Government make public the findings of all investigations into alleged misconduct of detainees by its forces in Iraq and Afghanistan, the Committee would welcome the State party's provision of disaggregated information as to the number of investigations undertaken, the results of those investigations, the number of resulting prosecutions before martial or civil courts, and the outcomes of those proceedings. The Committee would also value clarification by the State party of the manner in which such complaints are investigated, including what legal means there are for victims to challenge final decisions of the investigations undertaken, and how appropriately robust independence of the investigating body is ensured.

**Paragraph 5(g)**

With regard to the Committee's recommendation in paragraphs 5(g), the Committee notes expanded counter-terrorism and public security powers that have been introduced for the United Kingdom generally in the form of the Counter-Terrorism Act 2008, and for Northern Ireland in the form of the Justice and Security (Northern Ireland) Act 2007. The Committee would be grateful for the State party's clarification, in the light of the assessments and review undertaken in respect of the already existing counter-terrorism and public security legislation, of why further powers were considered necessary. The Committee would further appreciate indication of the review processes envisaged to determine whether these new pieces of legislation are necessary in the light of experience, achieve their stated purposes and operate in full conformity with the Convention.

Under this head, the Committee continues to remain particularly concerned at the permissible length of pre-trial detention expanded by the Terrorism Act of 2006 to 28 days. In order to fully address its concerns on this issue, the Committee would welcome the State party's provision of information on average length of pre-trial detention in counter-terrorism and public security cases since passage of the Act, as well as how often the full length of 28 days has been reached.

**Paragraph 5(h)**

While we welcome the State party's efforts to develop an alternative to indefinite detention, consistent with its international human rights obligations including the Convention, the Committee has indicated concern regarding the regime of control orders established under the Prevention of Terrorism Act of 2005 (as amended and renewed) which permits the issuing of control orders to restrict the activities of individuals suspected of terrorism-related activity but for whom there is insufficient legally admissible evidence to bring charges.

The Committee would welcome the State party's clarification on how it applies these powers in practice in light of the House of Lords' opinions in *Secretary of State for the Home Department v JJ et al.*, *Secretary of State for the Home Department v E et al.*, and *Secretary of State for the Home Department v MB*. The Committee would also appreciate detailed information on the number of persons currently under control orders and the duration and nature of the restrictions they face, as well as the reasons for which control orders were discontinued and whether any criminal charges were brought.

**Paragraph 5(i)**

On the issue of diplomatic assurances, the Committee notes the recent decision of the *House of Lords in RB (Algeria) et al. v Secretary of State for the Home Department* that in light of the measures taken, there was not a real risk of torture in the event of deportation on the facts of these cases. The Committee also notes the interim measures indicated by the European Court of Human Rights pending its hearing of the application made to it in this case. The Committee would welcome the State party's provision of further information covering the period since its responses to the Committee, on how it plans to ensure comprehensive and independent monitoring of persons removed under Memoranda of Understanding with Algeria and Jordan, including the possibility of unannounced, unmonitored visits with independent medical expertise. It would also welcome the State party's indication of whether it continues the elaboration of similar Memoranda with other States, such as Iraq and Libya, and, if so, what safeguards those Memoranda envisage in order to ensure appropriate monitoring and adherence to their terms. It would also welcome the State party's clarification of how, into the future, the State party would be able to ensure that the terms of such Memoranda continued to be adhered to even if it is so satisfied at the present time.

**Paragraph 5(j)**

The Committee welcomes the State party's indication of the procedures in place to ensure that the conduct of its officials is in conformity with the requirements of the Convention, and that any alleged breaches should be investigated. The Committee would welcome clarification of the steps taken by the State party to revise these procedures and ensure accountability following the serious allegations made by former US detainee Binyam Mohamed that the State party's MI-5 intelligence agency was complicit in abusive interrogation tactics, given also that according to information before the Committee, senior officials were aware of this five months before an investigation was announced. The Committee would also welcome the State party's clarification on how its investigatory procedures were amended following the House of Lords opinion in the case of *Al Skeini et al. v Secretary of State for Defence* in which it was found that comprehensive standards of investigation were applicable to the death of detainee Baha Mousa in United Kingdom custody in Iraq.

**Paragraph 5(l)**

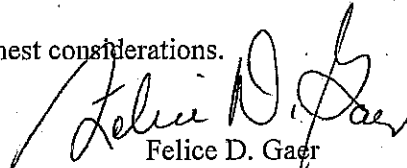
The Committee is grateful for the information provided on the number of deaths in custody and measures in place to address this problem, but would welcome updated information on the number of deaths in custody from 2005 through 2008, disaggregated by age, gender, and location. The Committee would also appreciate receiving information on the implementation of the action plan and McClelland Report referred to in paragraph 80 of the State party's response, including information on its impact on the provision of health care and mental health provision for vulnerable prisoners. The Committee would also value updated information on the suicide and self-harm policy that was introduced in March 2004, the degree to which the policy was updated to reflect the recommendations of the McClelland Report, and the impact it has had on the number of incidents of suicide and self-harm in the State party's prison system.

The Committee is pleased to note that prisoner violence has been reduced in the Scottish prisons, despite an increased population. It would also appreciate receiving updated information on the implementation of mechanisms and procedures in Northern Ireland prisons to reduce inter-prisoner violence. The Committee likewise thanks the State Party for information provided on measures taken to prevent overcrowding in the prison system, and would remain grateful for updated information on the number of prisoners currently detained as well as the capacity of the State party's prison system. It would also welcome information on the impact of the measures taken to improve prison conditions in Scotland mentioned in paragraph 92 of the State party's response. Please also provide the Committee with updated information on the impact of the action plan relating to conditions for female prisoners and the training programs, referred to in paragraphs 100 and 104, respectively, of the State party's responses.

The Committee also notes that the Human Rights Committee, in its recent Concluding Observations of 30 July 2008 (CCPR/C/GBR/CO/6) on the State party's sixth periodic report under the International Covenant on Civil and Political Rights identified a number of issues also falling within the competence of this Committee. In respect of the matters raised in the present letter, that Committee itself sought follow-up information on three relevant questions – deportation under assurances (para 12), extra-territorial application of obligations and prosecution (para 14) and further legislative counter-terrorism measures (para 15). In view of the mutuality of the committees' concerns, this Committee would be grateful if the State party would also provide to it a copy of its responses made to the Human Rights Committee.

Upon receipt of additional information, the Committee will be able to assess whether further information may be required. The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of the United Kingdom on the implementation of the Convention.

Please accept, Excellency, the assurances of my highest considerations.



Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations  
Committee against Torture