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**United Kingdom of Great Britain and Northern Ireland –
Response to letter from the Rapporteur for Follow-up on Concluding
Observations of the United Nations Committee Against Torture (29 April 2009)**

In her letter of 29 April 2009 Ms Felice Gaer, the Rapporteur for Follow-Up on Concluding Observations, made reference to issues raised by the Human Rights Committee in their Concluding Observations following their 2008 examination of the United Kingdom. She noted that a number of these issues also fell within the scope of the Committee Against Torture.

The United Kingdom has now responded to the Human Rights Committee on four issues, three of which were highlighted by the Rapporteur as of interest to the Committee Against Torture. I attach a copy of the United Kingdom response as requested.

The other issues raised in the Rapporteur's letter will be addressed within the United Kingdom's periodic report to the Committee.

Jenny Pickrell
Head of United Nations and EU
Human Rights Division

OHCHR REGISTRY

25 AOUT 2009

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NOTE VERBALE 105

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations and Other International Organisations in Geneva presents its compliments to the United Nations Committee Against Torture and has the honour to submit for consideration the United Kingdom's response to the Human Rights Committee's concluding observations, as requested.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the United Nations Committee Against Torture the assurances of its highest consideration.

**UNITED KINGDOM MISSION
GENEVA**

21 August 2009





INITIAL RESPONSE TO THE CONCLUDING OBSERVATIONS
(CCPR/CGBR/CO/6) ON THE REPORT OF THE UNITED KINGDOM
(CCPR/C/GBR/6)

A. Introduction

1. In paragraph 31 of its concluding observations (adopted on 18 July 2008) on the United Kingdom's sixth periodic report, the Human Rights Committee asked the United Kingdom to provide, within 12 months, information on matters referred to in paragraphs 9, 12, 14 and 15 of the concluding observations. The information requested by the Committee is set out below. Information on the remainder of the issues raised by the Committee will, as the Committee has requested, be included in the United Kingdom's seventh periodic report.

B. Paragraph 9 - The State party should conduct, as a matter of particular urgency given the passage of time, 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.

2. The issue of how to address the legacy of Northern Ireland's violent past remains one of the Government's greatest challenges, and there are a range of measures in place to review unsolved deaths in Northern Ireland.
3. As the Committee is aware, public inquiries were established on 12 November 2004 to examine the deaths of Robert Hamill, Billy Wright and Rosemary Nelson and these inquiries are currently underway. Each inquiry is being conducted by an independent, impartial panel of three individuals chaired by a senior retired judge. Two of these three inquiries – the Robert Hamill and Billy Wright Inquiries – are being conducted under the Inquiries Act. They were originally established under other legislation but were converted to the Inquiries Act at the express request of the independent judges chairing them. The Government does not believe the fact that these two inquiries are taking place under the Inquiries Act should be a matter for concern.
4. The conduct and timing of these inquiries is a matter for the independent inquiry panels. The inquiries have taken longer than originally anticipated due to difficulties with the gathering and processing of evidence, including an increase in the volume and complexity of material they have had to analyse, and the extra work caused by legal challenges. The Billy Wright Inquiry's oral hearings concluded on 2 July 2009. The Rosemary Nelson Inquiry's oral hearings concluded on 24 June 2009. The Robert Hamill Inquiry began its oral hearings on 13 January 2009. Witness questioning is expected to last until the end of September 2009, with final oral and written submissions due to conclude by 18 December 2009. All three inquiries expect to produce their reports in 2010.
5. It should be noted that there remains a fourth public inquiry underway in relation to Northern Ireland. The Bloody Sunday Inquiry was established on 29 January 1998. Its remit is to determine, so far as possible, the truth of what happened in Londonderry on 30 January 1972, when soldiers opened fire during a disturbance resulting in thirteen people being killed and another thirteen wounded, one of whom subsequently died. The Tribunal of the Inquiry is chaired by Lord Saville of Newdigate, supported by Mr Justice Hoyt (Canada) and Mr Justice Toohey (Australia). The Inquiry completed its public proceedings in

November 2004 and the Tribunal are currently engaged in drawing up the report of their findings.

6. The Committee has previously asked about an inquiry into the death of Patrick Finucane. The UK Government announced in 2005 that such an inquiry would be set up under the new Inquiries Act. However, Mr Finucane's family made clear their opposition to an inquiry under this legislation and no inquiry has been established. The UK Government has always been clear that if there is to be statutory inquiry into Mr Finucane's death it would have to be held under the Inquiries Act. The UK Government is in correspondence with the Finucane family about the terms on which any inquiry might be established. The outcome of those discussions will be taken into account in deciding whether it remains in the public interest to proceed with an inquiry.
7. Notwithstanding discussions about a possible inquiry, it is the UK Government's view that the extensive Stevens III investigation into the murder of Patrick Finucane and the subsequent decisions on prosecution taken by the independent Director of Public Prosecutions (DPP(NI)) have provided a thorough and effective examination of Mr Finucane's death. The three independent inquiries conducted by Lord Stevens constitute one of the largest and most comprehensive police investigations ever undertaken in the United Kingdom. Lord Stevens amassed a huge amount of evidential material which resulted in over 10,000 pages worth of files being submitted to the DPP(NI) for consideration during the course of the Stevens III investigation. It was as a result of this investigation that Ken Barrett was found guilty of and prosecuted for the murder of Patrick Finucane in September 2004.
8. The investigation of Mr Finucane's death has been the subject of an application to the European Court of Human Rights, which in 2003 held that there had been a violation of Article 2 of the Convention in respect of failings in the investigative procedures concerning the death. The UK Government notes that on 19 March 2009 the Committee of Ministers of the Council of Europe, which has been monitoring the steps taken by the UK Government to implement the Court's judgment, resolved to close the examination of this case with respect to individual measures (Interim Resolution CM/ResDH(2009)441).
9. It should be noted that public inquiries are only one mechanism through which deaths attributable to the Troubles have been addressed in Northern Ireland. The Police Service of Northern Ireland's (PSNI) Historical Enquiries Team (HET) began its work in January 2006 and provides a thorough and independent re-examination of 3,268 deaths attributable to the Troubles committed between 1968 and 1998. HET has three aims:
 - to assist in bringing a measure of resolution to those families of victims affected by deaths attributable to 'the Troubles';
 - to re-examine all deaths attributable to 'the Troubles' and ensuring that all investigative and evidential opportunities are examined and exploited in a manner that satisfies the PSNI's obligation of an 'Effective Investigation'. (Article 2, Code of Ethics for PSNI); and
 - to do so in a way that commands the confidence of the wider community.
10. An HET review of a case is a five-step process involving the following stages:
 - Collection

¹ Adopted by the Committee of Ministers on 19 March 2009 at the 1051st meeting of the Ministers' Deputies

- Assessment
- Review
- Focussed Re-investigation
- Resolution

11. As at March 2009, 1,421 cases had been opened with 513 cases completed. The HET pledges to deal with families with honesty, trust and confidentiality. Providing such a 'family centred' approach is at the heart of the HET project, and the HET's primary aim is to address, as far as possible, all the unresolved concerns that families raise. Given the scale of its remit a prioritisation system for reviewing cases is necessary. In order to treat each case equally the HET allocate cases on a chronological basis, beginning with incidents which took place in 1968. There are a number of occasions, however, when it is necessary to depart from this chronological approach. These include previously opened investigations, humanitarian considerations, issues of serious public interest, and linked series of murders.
12. The HET works closely with the Office of the Police Ombudsman for Northern Ireland (OPONI). In cases where there are allegations about the actions of police officers, the HET refers them to OPONI and separate, parallel investigations are conducted. HET and the OPONI hold monthly strategic and tactical meetings. A Memorandum of Understanding has been adopted between the two parties and is subject to regular review. As at May 2009 the HET has referred 62 cases to OPONI.
13. An inquest is one mechanism which can contribute to the provision of an investigation into a death. The purpose of an inquest is to establish who the deceased was and how, when and where they died. It is for the coroner to determine the scope of the inquest and decide what material is relevant to the inquest.
14. In 2007 the NI Coroner reopened/recommenced a number of inquests as a result of a House of Lords judgment which confirmed that the Chief Constable has an ongoing duty to disclose information to the coroner. Twenty-two of these reopened inquests concern 32 deaths arising from the security situation during the Troubles (including deaths resulting from security force action).
15. Consideration is currently being given to how to deal with the legacy of Northern Ireland's violent past more generally. With this in mind, the Consultative Group on the Past was established in June 2007 to:

"consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years; and to make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the past."
16. This Group provided a platform for people to express their own views on how to address the violent legacy of the Troubles, which impacted on so many across all sections of society. Co-chaired by Lord Robin Eames and Denis Bradley, the Group brought together a range of people from across Northern Ireland. Former Finnish President Martti Ahtisaari and mediation expert Brian Currin acted as international advisers to the panel, offering impartial advice on any lessons that might be learned for Northern Ireland from their wide-ranging experience of addressing the aftermath of conflict in other countries.

17. During consultation the Group received a total of 245 written submissions, met with over 100 organisations and held seven public meetings across Northern Ireland. The Group launched their report on 28 January 2009, in Belfast.
18. The report has 31 recommendations. One proposal - that £12,000 should be paid to the nearest surviving relative of everyone who died during the Troubles – provoked a considerable public response, with strong opposition from many people. On 25 February 2009, the Secretary of State for Northern Ireland noted that there was no consensus around the issue of the £12,000 recognition payments, and made clear that the Government would not be taking these forward. He also noted that the other 30 recommendations deserved careful consideration and encouraged wider debate on these other proposals. As the Secretary of State was concerned that there had not yet been a thorough debate about the other recommendations in the Report, on 24 June he announced a public consultation on the Group's recommendations. The consultation invites everyone to study all of the recommendations carefully and share with the Government their views on each of them. The consultation period will run until 2 October 2009. Whatever the outcome of the consultation may be the Government will continue to support Northern Ireland on the path to reconciliation.

C- Paragraph 12 - The State party should ensure that all individuals, including persons suspected of terrorism, are not returned to another country if there are substantial reasons for fearing that they would be subjected to torture or cruel, inhuman or degrading treatment or punishment. The State party should further recognise that the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. The State party should exercise the utmost care in the use of such assurances and adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported, as well as effective means to monitor the fate of the affected individuals.

19. The UK Government will not remove a person where there are substantial grounds for believing there is a real risk of torture or other cruel, inhuman or degrading treatment or punishment. As an early signatory to a number of international human rights conventions and having incorporated the European Convention on Human Rights into domestic legislation, the United Kingdom is deeply conscious of its human rights obligations and is intent on being consistent with them.
20. The UK Government does not accept that the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances and believes that, on a case by case basis, government to government assurances may be used in removal cases to ensure an individual's safety on return, particularly in the national security context. The seeking and obtaining of assurances does not automatically mean that the individual will be removed. It is only when all the information is assessed that a judgment is made as to whether or not the individual's removal would be consistent with our human rights' obligations.

21. While aware that the phrase “diplomatic assurances” is often used as a generic description, the United Kingdom is aware of the considerable variation in the particular practices operated by States under this heading. With regard to the United Kingdom’s own practice, considerable care has been taken to conclude framework agreements with a number of countries which enable us to seek and obtain from the highest level of government assurances in the particular areas relevant to the individual whose deportation is being considered. For example, if it emerges in enquiries that the individual faces detention, criminal charges or trial on return, care is taken to ascertain precisely what the law of the country provides in these areas, how it operates in practice, what the standards are and exactly how all this will be applied to the individual in question. Appropriate monitoring of individuals returned is put in place to ensure compliance with the general and specific assurances entered into.
22. Deportation from the UK is subject to a statutory right of appeal to an independent Tribunal (the Asylum and Immigration Tribunal) or, in certain cases such as where national security is of concern, the Special Immigration Appeals Commission, which is a superior court of record. The Tribunal may consider both the case both for removal of the individual and their safety on return. In February 2009 the House of Lords upheld the use of government to government assurances with Jordan and Algeria in their judgment in the cases of Othman (OO) and RB & U. In so doing the House of Lords was satisfied that the Special Immigration Appeals Commission had applied the correct legal tests in determining the adequacy of assurances with Algeria and Jordan and that it was open to the Commission to reach the factual conclusions it did. The Commission analysed the assurances with rigour and the leading judgments for each of those countries (in which the assurances were considered in detail) were each over 100 pages in length.
23. In addition to having in place a process with the governments of certain countries for the seeking of human rights’ assurances, the United Kingdom has made arrangements in all existing agreements for the monitoring of the treatment received by any individuals deported and for adherence to the assurances provided. In some countries, monitoring will be carried out by an independent body appointed for this purpose. In other cases, this is done through the British Embassy in the country concerned.

D – Paragraph 14 – The State party should state clearly that the Covenant applies to all individuals who are subject to its jurisdiction or control. The State party should conduct prompt and independent investigations into all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel (including commanders), in detention facilities in Afghanistan and Iraq. The State party should ensure that those responsible are prosecuted and punished in accordance with the gravity of the crime. The State party should adopt all necessary measures to prevent the recurrence of such incidents, in particular by providing adequate training and clear guidance to its personnel (including commanders) and contract employees, about their respective obligations and responsibilities, in line with articles 7 and 10 of the Covenant. The Committee wishes to be informed about the measures taken by the State party to ensure respect of the right to reparation for the victims

24. The UK's human rights obligations are primarily territorial, owed by the government to the people of the UK. The UK, therefore, considers that the

ICCPR applies within a state's territory. The UK considers that the Covenant could only have effect outside the territory of the UK in very exceptional circumstances. We are prepared to accept that the UK's obligations under the ICCPR could in principle apply to persons taken into custody by UK forces and held in military detention facilities outside the UK. However, any such decision would need to be made in the light of the specific circumstances and facts prevailing at the time.

25. We repeat our previous assurances to the Committee that we condemn all acts of abuse and have always treated any allegations of wrongdoing brought to our attention extremely seriously. We have already assured the Committee that police investigations are carried out where there are any grounds to suspect that a criminal act has or might have been committed by service personnel, and/or where the rules of engagement have been breached. Where there is a case to answer, individuals will be prosecuted by Court Martial. The procedure at a Court Martial is broadly similar to a Crown Court and the proceedings are open to the public.
26. The Armed Forces are fully aware of their obligations under international law. They are given mandatory training which includes specific guidance on handling prisoners of war. The practical training now provided for the Army deploying on operations provides significantly better preparation in dealing with the detention of civilians than ever before. There are some failings that the Army has already recognised and taken specific action to rectify as part of its process of continuous professional development. Other UK personnel deploying to operational theatres who are likely to be involved in activities that require an understanding of these international obligations are also given appropriate guidance.
27. Reparation will be paid to victims or their families where there is a legal liability to do so resulting from the unlawful activities of any member of the UK armed forces. Claims for death and personal injury can be brought under UK common law and compensation may be payable for human right breaches under the Human Rights Act where that applies. Compensation may also be payable under UK criminal injuries compensation provisions where applicable. Details of our compensation payments can be found at this web link:
<http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/FinanceandProcurementPublications/Claims/ModClaimsAnnualReports.htm>

E – Paragraph 15 - The State party should ensure that any terrorist suspect arrested should be promptly informed of any charge against him or her and tried within a reasonable time or released.

28. The terrorist threat level in the UK is Substantial, where a terrorist attack is a strong possibility; and an attack might occur without further warning. This could happen at any time. Since July 2005 when British terrorists attacked the London transport system, murdering 52 people, there have been numerous plots against UK citizens, including in London and Glasgow in June 2007 and Exeter in May 2008.
29. The safety of the public is paramount and it is the responsibility of Government and security and law enforcement agencies to protect our citizens from the threats posed by terrorism. Chief Officers have reported the complexity in counter-terrorism investigations. This is in part due to the greater use of encrypted computers and mobile phones; the increasingly complex nature of

terrorist networks that have to be investigated; and the increasingly international nature of terrorist networks meaning greater language difficulties and greater need to gather evidence from abroad.

30. Suspects arrested under section 41 of the Terrorism Act 2000 can be detained for a maximum of 28 days before they must either be released or charged. The detention of all suspects after 48 hours must be approved by a judge.
31. The judge can approve further detention for up to 7 days at a time but may authorise a lesser period of further detention. The judge may, of course, not authorise any further detention in which case the suspect must be released. The judge can only approve further detention if satisfied that:
 - a) there are reasonable grounds for believing that further detention is necessary to obtain, analyse or preserve relevant evidence; and
 - b) the investigation is being conducted diligently and expeditiously.
32. Terrorist suspects will therefore only be detained for more than 48 hours where this is determined to be necessary by an independent judge. The Crown Prosecution Service (CPS) has a policy of charging as soon as practicable. The timing of charging is something that is very closely monitored and discussed between the CPS and the investigator.
33. The suspect and their legal representative can make representations as part of the hearings for further detention. Applications for detention beyond 14 days are made by the CPS and heard by a High Court judge. The application for extension is a rigorous process. A CPS lawyer makes the application for extensions beyond 14 days and the Senior Investigating Officer is present. Defence solicitors are provided in advance of each application with a written document setting out the grounds for the application. The applications are usually strenuously opposed and can last several hours. The officer may be questioned vigorously by the defence solicitor about all aspects of the case.
34. In 2009 Her Majesty's Crown Prosecution Service Inspectorate (HMCPSI) carried out a detailed independent inspection of the Counter Terrorism Division of CPS Headquarters (report published on 16 April 2009). The report examined cases where there had been pre-charge detention. At least one of the cases involved detention beyond 14 days (Operation Seagram which related to the London/Glasgow bombings in 2006). In all cases there was clear evidence on the file that pre-charge detention had been properly monitored, reviewed and the application for extension was entirely appropriate.
35. Where the charging decision is to be made, the standard to be applied in reaching the charging decision will be the Full Test under the Code for Crown Prosecutors: namely (following a review of the evidential material provided) that there is enough evidence to provide a realistic prospect of conviction and that it is in the public interest to proceed.
36. In cases where it is determined that it would not be appropriate for the person to be released on bail after charge and where the full evidential material required for charge is not yet available but there is reason to believe it will be shortly, the Crown Prosecutor will assess the case against the Threshold Test and a review date for a Full Code Test agreed as part of an action plan.

37. This was an important independent assessment, and clearly showed that HMSPCSI felt that the CPS charge at the earliest possible moment based on the evidence at hand.
38. The latest Police statistics show that forty-six per cent of those arrested under section 41 of the Terrorism Act 2000 were held in pre-charge detention for under one day and 66% for under two days, after which they were charged, released or further alternative action was taken. Since the maximum period of pre-charge detention was increased to 28 days with effect from 25 July 2006, 6 persons have been detained for the full period, of whom 3 were charged and 3 were released without charge.
39. It is also of note that a person arrested under section 41 of the 2000 Act is given as much information from the time of their arrest, as reasonably possible within the constraints of protecting and effectively conducting the ongoing investigation, about what it is they are alleged to have done.