



Mid-Term report on the UN UPR of the UK

Submissions to the UK Government from Rights Watch (UK)

OCTOBER 2013

Submissions of Rights Watch (UK) (formerly British Irish Rights Watch)

Our Mission: Promoting human rights and holding governments to account, drawing upon the lessons learned from the conflict in Northern Ireland.

Our Expertise and Achievements: Since 1990 we have provided support and services to anyone whose human rights were violated as a result of conflict. Our interventions have reflected our range of expertise, from the right to a fair trial to the government's positive obligation to protect life. We have a long record of working closely with NGOs and government authorities to share that expertise. And we have received wide recognition, as the first winner of the Parliamentary Assembly of the Council of Europe's Human Rights Prize in 2009 alongside other honours.

UPR Recommendation 110.3:

Recognize the extraterritorial application of the CAT, according to its jurisprudence (Nicaragua) (*not accepted*)

We urge the UK government to recognise the extraterritorial application of the United Nations Convention Against Torture (UNCAT) in demonstration of its commitment to both the spirit and the letter of UNCAT, the UK's role as a responsible advocate for human rights within the international community in expression of the abhorrence of the practice of torture and given the existing obligations of the UK as a member of the Council of Europe in having partially incorporated the European Convention on Human Rights 1950 (the Convention) in domestic law through the Human Rights Act 1998 (HRA98). Given the UK's existing legal obligations and commitments it is disingenuous not to recognise the extraterritorial application of UNCAT.

UPR Recommendation 110.20:

Establish a timetable for signature and ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, and for full recognition of the competence of the Committee on Enforced Disappearance (France) (*not accepted*)

We urge the UK government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and to recognise the competence of the Committee on Enforced Disappearance. The UK government's statement that this process requires resources and parliamentary time is not sufficient to justify inaction when action by the UK government would give further credence to its commitment to international human rights and international humanitarian interventions.

UPR Recommendation 110.33:

Consider that any person detained by its armed forces is under its jurisdiction, and respect its obligations concerning the human rights of such individuals (*not accepted*)

We consider that in accordance with the jurisprudence of the European Court of Human Rights (ECtHR) specifically *Al-Skeini* [55721/07] that any person detained by UK forces (both military and security) are within the jurisdiction of the UK and therefore are afforded the protection of the Human Rights Act 1998 partially incorporating the Convention and the UNCAT (when accepted). The UK government accepts that its personnel on military operations are subject to domestic law therefore there is no block to the recognition that all those subject to detention by these personnel are afforded human rights protection.

UPR Recommendation 110.36:

Adopt measures necessary to ensure the independence of the Commissioners in accordance with the Paris Principles (Costa Rica) (*accepted*)

We would request that the A-rated status of the Northern Ireland Human Rights Commission (NIHRC) is guaranteed by the UK government pending the implementation of any further transitional justice arrangements between the Westminster and Stormont. Given the centrality of human rights to the Belfast/Good Friday Agreement and the related settlements it is important that any further devolution of powers measures in terms of legislation serve to ensure the A-status of the NIHRC.

UPR Recommendation 110.54:

Take further steps to address ethnic profiling in practice (Greece) (*not accepted*)

With reference to the stop and search powers of the police, including specific provisions in relation to Northern Ireland and recent and forthcoming litigation on this issue, we submit that ethnic profiling in relation to the stop and search can be both intrusive and discriminatory and in breach of Articles 8 and 14 of the European Convention on Human Rights. We note the litigation now being issued against the Metropolitan Police by the Independent Police Complaints Commission in its refusal to release results of investigations it was ordered to conduct into allegations that the MPS used counter-terrorism powers to discriminate against members of the Muslim community.¹

In relation to intrusion the right to private and family life is not absolute and can be restricted for the purpose of law enforcement or national security. However, there are limitations on such restrictions designed to prevent unnecessary intrusion. Powers to stop and search/question people raise human rights concerns when they are exercised in an arbitrary and disproportionate manner and effectively used as a tool of harassment and control rather than to genuinely search for prohibited items. The Council of Europe's European Commission on Racism and Intolerance (ECRI) General Recommendation on Combating Racism and Racial Discrimination in policing addresses racial profiling defining the practice as: "The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities".²

To prevent such practices ECRI urge: police training; monitoring broken down by grounds including ethnic origin, religion and nationality; and the introduction of a reasonable suspicion standard founded on objective criteria. It is this human rights focus that should inform the policy of the UK government on the matter of ethnic profiling and stop and search powers.

UPR Recommendation 110.67:

Ensure that inquiries are carried out immediately, independently, and transparently in cases where members of the armed forces are suspected of having committed acts of torture, particularly in the context of their service abroad (Switzerland) (*accepted in part*)

¹ Police face court over refusal to hand over reports on anti-Muslim 'bias' <http://www.theguardian.com/uk-news/2013/sep/13/police-court-reports-anti-muslim-bias>

² ECRI (Council of Europe) General Policy Recommendation No. 11 on Combating racism and racial discrimination in policing, adopted on 29 June 2007, CRI (2007) 39, Paragraph I.

There is still no statutory inquiry under the Inquiries Act 2005 into the systemic abuse by UK forces of Iraqi nationals following the invasion in 2003. Not all the recommendations of the Baha Mousa Inquiry have been implemented and it is becoming clear from the evidence being taken by the Al Sweady Inquiry that abuse against Iraqi nationals by UK forces was endemic.

The Ministry of Defence reaction to these allegations was to establish the Iraqi Historical Allegations Team, the independence of which was subject to litigation in *Ali-Zaki Mousa (No 2) and Others v Secretary of State for Defence* [2013] EWHC 1412 (Admin) where the court found that IHAT was not independent.

Therefore, in relation to the UK's statutory duties under the Human Rights Act 1998 and specifically Article 2 of the Convention which is incorporated through the Act there is no human rights compliant mechanism in the UK which can serve to discharge the investigatory procedural obligations which arise when the UK government has either indirectly failed to protect life or has directly taken life in the circumstances of UK military operations overseas. The existing mechanisms of investigation are not independent of the perpetrators of the breaches of Article 2 and by extension to Article 3. We envisage this to become equally problematic in relation to UK detention operations in Afghanistan.

We therefore recommend:

- The implementation of all the recommendations of the Baha Mousa Inquiry;
- A statutory inquiry into the allegations of systemic abuse of Iraqi nationals following the invasion in 2003;
- The establishment of an Article 2 compliant mechanism of investigation to discharge the procedural obligations arising following a breach of both Article 2 and Article 3 by British military personnel.

UPR Recommendation 110.68:

Along with the Special Procedures, investigate allegations of the systematic use of torture by British soldiers vis-à-vis detainees outside the country, and inform the results of these investigations to the UN human rights mechanisms, including the Human Rights Committee, Human Rights Council and its mechanisms (Belarus)

Following the comments of the UK government in response to UPR Recommendation 110.67 we note that on the issue of detention of foreign nationals by third countries the UK government refers to the "Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees". On the interrogation of foreign nationals in third countries by UK security service personnel (military, MI5 and MI6) we recommend:

- The immediate publication of the interim report of the suspended Detainee Inquiry;
- A statutory inquiry into the issue of the use torture and extraordinary rendition by the UK security services with complete victim participation in accordance with Istanbul Protocol;
- The establishment of the an Article 2 compliant mechanism of investigation to discharge the procedural obligations arising following a breach of both Article 2 and Article 3 by UK security service personnel; this mechanism would be an independent oversight mechanism to ensure transparency and accountability in this area of UK security operations.

UPR Recommendations 110.81 and 110.82:

181: Strengthen guarantees for detained persons, and not to extend but to shorten the length of time of pre-trial detention (Islamic Republic of Iran) (*not accepted*)

182: Ensure realization of the right of detainees to the legal assistance immediately after being taken into detention without exception (Russian Federation) (*accepted in part*)

On 181, we note the pending application to the ECtHR in the case of Colin Duffy regarding the length of pre-charge detention in an alleged terrorist offence (subsequently acquitted).³ Therefore, in arrests and pre-charge detention in alleged terrorism offences the legislation in force in the UK is subject to challenge on the grounds of incompatibility with Articles 5 and 6 of the Convention. We also note the comments of the Independent Reviewer of Terrorism Legislation on this matter and the issue of bail in these circumstances.⁴

On 182, we are concerned regarding the power given to a “qualified officer” under Schedule 8 of the Terrorism Act 2000 and PACE Code H following arrest under section 41 of the Terrorism Act 2000 that a consultation with a solicitor must take place in the sight and hearing of the “qualified officer”. In addition to the random electronic monitoring of client-lawyer interviews in police stations, this provision undermines the central doctrine of client-lawyer privilege.

UPR Recommendation 110.84:

Begin an independent investigation of all cases of arbitrary detention denounced due to UK’s implication in the program of secret detention led by the United States (Nicaragua) (*accepted*)

We repeat the recommendations above in relation to UPR Recommendation 110.68

- The immediate publication of the interim report of the suspended Detainee Inquiry;
- A statutory inquiry into the issue of the use torture and extraordinary rendition by the UK security services with complete victim participation in accordance with Istanbul Protocol;
- The establishment of the an Article 2 compliant mechanism of investigation to discharge the procedural obligations arising following a breach of both Article 2 and Article 3 by UK security service personnel; this mechanism would be an independent oversight mechanism to ensure transparency and accountability in this area of UK security operation.

UPR Recommendation 110.92:

Encourage the devolved government of Northern Ireland to increase resources and personnel available to the Historical Enquiries Team (United States of America) (*not accepted*)

Since the publication of the UK’s response to the **UPS**, the future of the PSNI HET is in flux with a significant portion of its work suspended. This follows the inspection by the HMIC and the publication of its report earlier this year. The 20 Recommendations made by the HMIC are now being implemented through the Northern Ireland Policing Board. We attach in the Appendix the submissions Rights Watch (UK) recently made to the Northern Ireland Policing Board.

³ Anti-terror laws face new human rights challenge at European court at <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/9653175/Anti-terror-laws-face-new-human-rights-challenge-at-European-court.html>

⁴ Reviewer of terror laws urges rethink over denying bail at <http://www.bbc.co.uk/news/uk-18610499>

Whilst we note the comment of the UK government on this matter and its reliance on the devolution of criminal justice powers to the Northern Ireland Assembly, we are concerned that an institution such as the PSNI HET being under such serious criticism, requires the commitment of the UK government in the continuing discussions on Dealing with the Past in Northern Ireland currently part of the remit of US Special Envoy Dr Richard Haass. It was the UK government who proposed the PSNI HET model as one of the package of measures in response to the judgments of the ECtHR in the *McKerr* group of cases to the Council of Ministers. It is our view that the UK government continues to have an obligation to Northern Ireland specifically in relation to the legacy of those deaths and injuries caused during the conflict where there was either direct or indirect state involvement. This would accord with the views being expressed in the USA (and most recently by President Obama in his speech of 17 June 2013) regarding the Belfast/Good Friday Peace Agreement. The future of the PSNI HET is part of what is now a much broader discussion about the past in Northern Ireland, as addressed in the recent report of Amnesty International "Northern Ireland: Time to Deal with the Past" which has been presented to the Secretary of State for Northern Ireland.⁵

⁵ Northern Ireland: Time to Deal with the Past at <http://www.amnesty.org/en/library/info/EUR45/004/2013/en>

Appendix

To add in up to date briefing.