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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Comments by the Government of the United Kingdom of Great Britain and Northe rn Ireland to the conclusions and recommendations of the Committee against Torture (CAT/C/CR/33/3)[*]

[14 March 2006]

[*] In accordance with the information transmitted to the States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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1. On 25 November 2004, following its examination of the United Kingdom's Fourth Periodic Report under the United Nations Convention Against Torture, the United Nations Committee Against Torture requested the Government of the United Kingdom to provide within one year information in response to its recommendations in paragraph 5, sub paragraphs (d), (e), (f), (g), (h), (i), (j) and (i) of its Concluding Observations on the examination.

2. The response of the United Kingdom Government is set out below.

Recommendation 5 (d): the State party should appropriately reflect in formal fashion, such as legislative incorporation or by undertaking to Parliament, the Government's intention as expressed by the delegation not to rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture; the State party should also provide for a means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture;

3. United Kingdom law already contains extensive safeguards in relation to evidence obtained by torture. Those safeguards are found in the common law and in the Police and Criminal Evidence Act 1984, and are further guaranteed by the Human Rights Act 1988.

4. Evidence obtained as a result of any acts of torture by British officials, or with which British authorities were complicit, would not be admissible in criminal or civil proceedings in the UK. It does not matter whether the evidence was obtained in the UK or abroad.

5. In the light of this, the Government does not consider it necessary to take further measures.

6. This issue arose during the individual appeals to the Special Immigration Appeals Commission (SIAC) – a Superior Court of Record – against certification under powers provided under Part 4 of the Anti-Terrorism, Crime and Security Act (ATCSA). When the UK delegation was examined by the UN Committee against Torture on 17-18 November 2004, it confirmed that it was not the Home Secretary's intention to rely on, or present to SIAC in relation to the ATCSA Part 4 powers, evidence which he knew or believed to have been obtained by a third country by torture. SIAC emphatically rejected any suggestion that evidence relied upon by the Government was, or even may have been, obtained by torture – or indeed by any inhuman or degrading treatment. This approach was upheld by the Court of Appeal, Lord Justice Laws asserting that it was "plain that there was no evidence in any of the appeals which should have persuaded SIAC that any material relied on by the Secretary of State had in fact been obtained by torture or other treatment in violation of ECHR Article 3. Nor did SIAC think there was."

7. An appeal against the Court of Appeal's judgment was heard by the House of Lords, sitting in its judicial capacity, in October 2005. On 8 December the Law Lords reached a unanimous decision on the following three points:

a) Evidence obtained by use of torture is inadmissible in the appeals against certification under Part 4 of the ATCSA in SIAC.(the application to other SIAC cases or other proceedings is still to be seen);

b) This "exclusionary rule" did not however extend to evidence obtained by the use of inhuman or degrading treatment;

c) The burden of proof was not on the Secretary of State to prove that evidence was not obtained by torture. Rather, it was for the appellant, or the special advocates (who represent the appellants in closed proceedings), to raise the issue of torture. If SIAC considers there are reasonable grounds to suspect that torture has been used, it must investigate the issue.

8. Their Lordships ruled (by a majority) that evidence should be admitted unless it is established by means of such diligent inquiries into the sources of the evidence that is practicable to carry out and on a balance of probabilities that the evidence was obtained by torture. If there was doubt as to whether it was obtained by torture, SIAC should admit the evidence, although it should bear this doubt in mind when evaluating the evidence.

9. This decision is welcomed by the Government. It will not change current practices, but it will provide greater legal certainty. The Government has always made it clear that it is not its intention to rely on or present to SIAC evidence which it knows or believes to have been obtained as a result of torture.

10. With regard to the Committee's recommendation that the Government should "provide for the means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture", the Law Lords ruled that if the appellants or special advocates (who represent the appellants in closed proceedings) raise the issue and SIAC considers there are reasonable grounds to suspect that torture has been used it must investigate the issue and the issue will be considered according to the standards of proof explained above

11. The individuals formerly certified under the ATCSA part 4 powers had recourse to a Special Advocate, who had access to all evidence – both open and closed.

12. Although Special Advocates are not able to communicate closed evidence to their clients, they are able to respond to evidence on their clients' behalf, ensuring that all evidence presented can be contested. The procedures that the Special Advocate has to follow ensure that the interests of the appellant are fairly represented whenever closed material is involved without compromising sources or the interests of national security.

13. The Special Advocate system has received approval from Lord Carlile – the independent reviewer of the Terrorism Act 2000 and the 2005 Act – and from the former Lord Chief Justice, Lord Woolf.

Recommendation 5 (e): the State party should apply articles 2 and/or 3, as appropriate, to transfers of a detainee within a State party's custody to the custody whether *de facto* or *de jure* of any other State;

14. In so far as this recommendation refers to action by the UK in Iraq and Afghanistan, the UK 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. Although a detainee may be physically transferred from UK to Iraqi custody, there is no question of expulsion, return (refoulement) or extradition to another State, as referred to in Article 3, all of which include an element of moving a person from the territory of one State to that of another.

15. If UK Forces were involved in wrongdoing, such as prisoner abuse, anywhere in the world, they would be prosecuted under English Law. The UK does not consider that Article 2 requires it to ensure that acts of torture are not committed by persons who are not subject to UK laws, as such an interpretation would be impossible to implement.

16. However, this does not mean the UK Government is not concerned about prisoner treatment. The UK Government has negotiated a Memorandum of Understanding with the Iraqi Government stating that detainees whom the UK Forces hand to the Iraqi authorities shall be treated humanely and not tortured. If the UK had reason to believe that the Iraqi authorities were not complying with this requirement, it would not transfer detainees to the establishment concerned and would take up the matter up with the Iraqi authorities at senior level. In the longer term, the UK believes that a positive engagement with the Iraqi local authorities to improve conditions in places of detention is likely to be the most effective way of ensuring that standards are raised. To this end, we are taking positive action such as providing training for the Iraqi prison service.

17. The position for Afghanistan is similar. As part of the leadership of the International Security Assistance Force the UK negotiated a Military Technical Agreement with the then Interim Administration of Afghanistan. It recognised that the provision of security and the maintenance of law and order are Afghan responsibilities. That includes the maintenance and support of a recognised Police Force operating in accordance with internationally recognised standards and human rights.

18. Initially in Iraq the UK transferred internees and prisoners of war to US detention facilities but the UK retained responsibility for their welfare as the detaining power in accordance with the Geneva Conventions. In particular, for the period from April to December 2003, when many detainees were held in a US facility at Camp Bucca, in Umm Qasr, a UK Monitoring Team and Prisoner Registration Unit was based at the facility to ensure the welfare of detainees held there

Recommendation 5 (f): the State party should make public the result of all investigations into alleged conduct by its forces in Iraq and Afghanistan, particularly those that reveal possible actions in breach of the Convention, and provide for independent review of the conclusions where appropriate;

19. When considering the release of such information into the public domain, the Government has to balance the importance of ensuring accountability of the Armed Forces, with the importance of respecting the rights of potential defendants in criminal proceedings and of protecting the rights of people against whom unfounded allegations are made.

20. Where there is a case to answer, individuals will be prosecuted. The procedure at a court martial is broadly similar to a Crown Court and the proceedings are open to the public. For example, the trials by court martial of British servicemen charged with mistreatment of Iraqi

civilians at a humanitarian aid distribution centre near Basra in May 2003 were extensively reported in the Press.

Recommendation 5 (g): the State party should re-examine its review processes, with a view to strengthening independent periodic assessment of the ongoing justification for emergency provisions of both the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000, in view of the length of time the relevant emergency provisions have been operating, the factual realities on the ground and the relevant criteria necessary to declare a state of emergency;

21. The Government does not consider that its review processes in relation to its counter-terrorism legislation are deficient, and would like to reassure the Committee on this point by outlining the review procedures in place for the Terrorism Act (TACT) 2000, the Anti-Terrorism, Crime and Security Act (ACTSA) 2001 and the Prevention of Terrorism Act (PTA) 2005. However, the Government would like the Committee to be aware that counter-terrorism legislation in the UK is not reliant on there being a state of emergency.

22. The powers under part 4 of the ATCSA have been replaced by a system of control orders introduced in the Prevention of Terrorism Act 2005. A detailed account of the new legislation is provided at paragraphs 36 to 44 below.

23. TACT was introduced to provide permanent counter-terrorism legislation. Section 126 of TACT requires the Secretary of State to lay a report before Parliament on the workings of the Act at least once a year. The report is provided by an independent reviewer, currently Lord Carlile of Berriew, following extensive consultation with a wide range of stakeholders – including the law enforcement and security agencies, human rights organisations, representatives from faith communities, the judiciary, and members of the public – on how the powers are used in practice.

24. The security situation in Northern Ireland is kept under constant review by the Secretary of State for Northern Ireland. Although the level of threat does not justify the declaration of a state of emergency, conditions in Northern Ireland require focused legislative provisions. The provisions of Part 7 of the TACT apply only to Northern Ireland and are a proportionate response to the continuing security situation that exists in that part of the UK. The Government recognises the exceptional nature of these provisions and in view of that, the provisions are subject to a comprehensive annual renewal process.

25. The powers provided under Part 7 of TACT are temporary measures. They are valid for five years and have been subject to annual review by Parliament. They are due to expire in February 2006. However under the Terrorism (Northern Ireland) Bill, which is currently undergoing its parliamentary stages, they will be extended for a further 18 months to 31 July 2007. The Independent Reviewer (Lord Carlile) also produces a separate annual report on the Part 7 powers at least once a year.

26. In addition, an international body – the Independent Monitoring Commission (IMC) – prepares a report every six months on the continuing activities of paramilitary groups in Northern Ireland, providing an independent assessment of the continuing terrorist threat.

27. The IMC was established by an international treaty between the UK and the Republic of Ireland. That treaty requires the IMC to be independent in the performance of its functions. Its objective is to report on levels of paramilitary activity and monitor any programme of security normalisation with a view to promoting the transition to a peaceful society and stable and inclusive devolved Government in Northern Ireland. Its reports therefore help to inform debates on the necessity for the temporary provisions, but they are not a requirement for those debates

28. The treaty states that the IMC must consist of four members, and also sets out how they shall be appointed. Two members, one of whom must be from Northern Ireland, are appointed by the UK Government. One member is appointed by the Irish Government and one member is appointed jointly by the two governments. The fourth member must be a nominee of the Government of the USA.

29. The IMC delivers its reports on paramilitary activity to the governments of the UK and the Republic of Ireland, who publish them simultaneously.

30. It is the Government's view that this combination of internal and external review provides an adequate independent periodic assessment of the ongoing justification for the Part 7 provisions of the Terrorism Act 2000.

31. Under the Good Friday Agreement, the Government remains committed to the removal of all special provisions when the security situation allows.

32. On 1 August 2005, the Secretary of State for Northern Ireland announced a programme of security normalisation in response to an IRA statement announcing an end to its armed campaign. The security normalisation programme envisages a gradual return to normal arrangements. The provisions contained in Part 7 of TACT are due to be repealed by the end of the normalisation programme. Subject to an enabling environment, the programme is expected to last for two years. Therefore the Terrorism (Northern Ireland) Bill, subject to Parliament approval, will extend the Part 7 provisions for a further eighteen months only to 31 July 2007. The Government has taken the view that it would be prudent to make legislative provision in case the security situation does not improve sufficiently to allow for the Part 7 provisions to cease to have effect in July 2007. The Bill therefore makes provision to enable Part 7 to be extended for up to a further twelve months to the 31st July 2008. This would be by an Order of the Secretary of State and would be subject to parliamentary approval. If, after this date, the prevailing security situation required it, a Bill to retain some or all of the anti-terrorist measures that apply specifically to Northern Ireland would be introduced.

Recommendation 5 (h): the State party should review, as a matter of urgency, the alternatives available to indefinite detention under the Anti-terrorism, Crime and Security Act 2001;

33. For the reasons set out in the UK's written response to issues raised by the Committee in advance of the 33rd session in November 2004, the Government does not accept that those certified under the Part 4 powers were held in "indefinite detention". The individuals concerned were held under immigration powers which enabled an individual to be detained because they could not, at that time, be removed from the country. The powers were used sparingly, and there

was a wide range of safeguards which protected the rights of the detainees and kept open the prospect of their release.

34. The Government believes that the detention powers were an appropriate response to the public emergency that the UK faced following the events of 11 September 2001. The powers were judged by Parliament to be necessary to protect national security in the United Kingdom. They have been replaced by a system of control orders introduced in the Prevention of Terrorism Act 2005. A detailed account of the new legislation is provided at paragraphs 36 to 44 below.

35. In December 2004 the House of Lords, ruling on an appeal brought by the detainees under the ATCSA, declared that section 23 ATCSA was incompatible with articles 5 and 14 of the European Convention on Human Rights (ECHR) in so far that it was disproportionate and permitted the detention of suspected international terrorists in a way that discriminated on the grounds of nationality or immigration status. Following this ruling, the UK Government acted swiftly to bring forward new legislation - the Prevention of Terrorism Act (PTA) 2005 - which became law in March 2005. The PTA repealed sections 21 to 32 of the ATCSA, and introduced a new system of control orders. Subsequently, the UK withdrew its derogations from the ECHR and the ICCPR.

36. Control orders impose one or more obligations upon an individual which are designed to prevent, restrict or disrupt his or her involvement in terrorism-related activity. The legislation is applicable to all individuals regardless of nationality or the terrorist cause they are perceived to espouse.

37. The PTA provides for two types of order: 'non-derogating control orders' in which the obligations imposed do not amount to a deprivation of liberty within the meaning of Article 5 ECHR; and 'derogating control orders', which impose obligations that do amount to a deprivation of liberty. The Government has not sought to make any derogating control order nor has it sought a derogation from Article 5 of the ECHR, and it does not for the present time intend to do so.

38. The orders themselves are based on a menu of options that can be employed to tackle particular terrorism activity on a case-by-case basis. This could, for example, include measures ranging from a ban on the use of communications equipment to a restriction on an individual's movement. This allows for orders to be suited to each individual and therefore to be proportionate to the threat that the individual actually poses.

39. Breach of any of the obligations of the control order without reasonable excuse is a criminal offence punishable with a prison sentence of up to five years, or a fine, or both.

40. A number of safeguards designed to protect the rights of the individual are contained in the legislation.

41. Firstly, the legislation ensures that for all control orders there is independent judicial scrutiny at an early stage which will involve the hearing of evidence in open and closed session against the imposition of any order or any subsequent variation of an order. The Secretary of State must normally apply to the courts for permission to impose a control order. If the court gives leave and this order is made, the case will then be referred for a judicial review of the

decision. In cases where urgent action is required, the Secretary of State may make a provisional order without permission which must then be reviewed by the court within seven days of the order being made.

42. Secondly, control orders themselves are subject to strict time limitations. The maximum duration for a control order is 12 months and a fresh application for renewal has to be made for the re-imposition of restrictive measures.

43. Thirdly, the Act itself will be subject a variety of reviewing and reporting requirements including:

a) an annual review of the entire Act by an independent reviewer (currently Lord Carlile) who will provide a report to Parliament on the workings of the Act;

b) requirement on the Home Secretary to report to Parliament every three months on the operation of the powers;

c) requirement for the Act to be renewed annually by vote in both Houses of Parliament.

44. Prosecution is, and will remain, the government's preferred way of dealing with terrorists. Priority will continue to be given to prosecution wherever possible, subject to the over-riding need to protect highly sensitive sources and techniques. However, in the absence of the ability to prosecute it is vital that the law enforcement agencies have the ability to act in order to disrupt and prevent further engagement in terrorism-related activity.

45. The Government therefore needs to consider what other actions are appropriate to address the threat. These include deportation and control orders.

46. For each individual it is necessary to choose the appropriate measures to deal with the threat and the specific circumstances. Each case is kept under review and where there is a change in the circumstances or the threat it is possible to determine whether any other action is appropriate. For example deportation becomes an option when previously it was not.

47. Nine individuals who have recently been detained pending deportation had been the subjects of control orders. The control orders have been revoked in these cases since the orders are now no longer necessary to protect members of the public from the risk of terrorism.

48. Deportations will not take place unless the Government is in a position to satisfy UK courts and the European Court in Strasbourg that the deportee's removal would be consistent with the UK's international obligations. The Government would not extradite a person where there is a real risk of the death penalty being imposed. Similarly, it would not remove a person under immigration powers where this would lead to treatment contrary to Article 3 of the Convention Against torture or Article 3 of the ECHR. All removal decisions may be appealed to the UK Courts.

Recommendation 5 (i): the State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or

guarantees have occurred since 11 September 2001, what the State party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;

49. The UK will remove individuals from the UK only where that is consistent with its international obligations, in particular the 1951 Geneva Convention relating to the status of refugees, the United Nations Convention Against Torture, and the European Convention on Human Rights. This principle applies in all cases, including those in which the UK seeks assurances from the authorities of another country before removal.

50. In certain circumstances, the Government will seek to remove a foreign national from the UK following receipt of assurances from the government of the country to which the person is to be removed regarding the future treatment of that person. Although the Government would only seek to do this in exceptional circumstances, it believes that seeking such assurances is a sensible measure in some cases where the presence of the person in the UK is not conducive to the public good, or where it considers that the person represents a security risk.

51. It is not possible to provide a strict definition of the circumstances in which the Government would seek to obtain assurances, or the exact nature of the assurances required. Each case will be dealt with in line with its particular circumstances and the UK's legal obligations. However it is possible to outline guidelines for use in assessing each case.

52. As a matter of policy, the UK will not remove someone who would face the death penalty in the country to which he is to be returned. Should a person on removal from the UK face trial on a charge for which the maximum sentence upon conviction is death, the UK Government would not remove the person from the UK without an assurance from the receiving government that, should the person be convicted, any capital sentence would be commuted.

53. Requests for any further assurances will depend upon the country concerned and the exact circumstances of the case, but examples might be:

a) That, if detained, the individual concerned will receive no ill treatment whilst in detention

b) That they will receive a fair trial and public hearing by an independent and impartial judiciary

c) That any trial will take place in a civilian court

d) That they will be informed promptly and in detail of the nature of the accusations against them

e) That they will have adequate time to prepare their defence

f) That they should be able to examine, or have examined, witnesses against them, and to obtain the attendance and examination of witnesses on their behalf.

54. Statistics giving the number of asylum seekers removed from the UK under assurances are not centrally recorded, and therefore a definitive figure cannot be given. In 2004, the UK removed two failed asylum seekers to Libya following receipt of assurances regarding the way in which they would be treated. The Government is not aware of any other cases.

55. The UK recognises the desirability of monitoring post-return in cases where assurances have been received, and will seek to provide for independent monitoring where that is considered appropriate. Whether or not assurances were accompanied by monitoring, the UK would only remove where it was satisfied the arrangements were such that removal could take place compatibly with its international obligations.

56. Memoranda of Understanding are currently being sought with a number of countries to which the UK Government wishes to deport foreign nationals it believes are involved in terrorism. In the main, these countries are in North Africa and the Middle East.

57. On 10 August 2005, the Government of the United Kingdom signed a Memorandum of Understanding with the Government of Jordan. That Memorandum provides a framework within which the United Kingdom Government can obtain assurances in relation to the treatment an individual will receive on his return to Jordan. A copy of the Memorandum, and an accompanying side-letter are attached at Annexes 1 & 2. Both are public documents, and have been deposited in the library of the House of Commons. They include the sort of assurances listed in para 50 above.

58. The two Governments are currently discussing monitoring arrangements that would apply under the MoU. The UK believes the key features of monitoring are independence and capacity.

59. A second MoU with Libya was signed on 18 October 2005. A copy of that document and the accompanying side-letter are attached at Annexes 3 and 4. A third MoU was signed with the Lebanon on 23 December 2005. A copy of that is attached at Annex 5.

60. During the course of 2005, deportation action on grounds of national security was commenced against 30 people in respect of whom the UK Government has sought or was proposing to seek assurances. All were initially detained under Immigration Act powers. In 6 cases, deportation action was subsequently discontinued, and the individuals concerned were released. At the end of the year, the position of the remaining 24 was that 3 were subsequently remanded in custody facing criminal charges; 6 had been released on bail; a further 3 had been granted bail in principle, but remained in detention pending finalisation of the bail conditions; and 12 were still in immigration detention.

61. The detainees have a right of appeal to the Asylum and Immigration Tribunal or the Special Immigration Appeals Commission (SIAC) against a decision to deport them. In the event of an appeal, the appellate body would need to be satisfied, among other things, that removal would be consistent with the United Kingdom's international obligations. In reaching a decision on that point, SIAC would have regard to any assurances obtained regarding the individual's treatment following his return.

62. The welfare of any British national extradited to another country following assurances is monitored by the Foreign and Commonwealth Office (FCO). Such cases fall into two categories: British nationals extradited from the UK; and British nationals extradited from one foreign country to another.

63. Although a significant number of British Nationals have been extradited from the UK since 2001, none has been extradited under assurances. In all cases consular staff aim to contact the extradited person within 24 hours of arrival and to visit them as soon as possible. Usually that is within 48 hours of being given permission to visit, but this varies depending on the distance involved and the prison conditions. Thereafter the frequency of visits depends on the country in which a prisoner is detained and the vulnerability of the prisoner. Standard visiting intervals range from once every 4 weeks to once every 3 months. In the EU, North America and Australia, one visit is made after sentencing, and thereafter only if need arises. Vulnerable groups (minors; the elderly; the mentally ill; or prisoners whose offence or past lives put them at risk) are visited more frequently.

64. All UK consular staff, including locally engaged staff, receive training on human rights issues and prison visiting. They also have access to written guidance on these issues and can contact the Consular Human Rights Adviser, who is a specialist in human rights law seconded into the FCO, for advice on how to proceed in any particular case. All FCO ministers are updated on key cases fortnightly.

65. The number of British nationals extradited from one foreign country to another is small. In some cases, the UK Government would wish to see assurances before a British national is extradited. Since 2004 there has been only one third-country extradition involving assurances (from Australia to Singapore) and it involved the death penalty. In this case Australia received an assurance from the Government of Singapore which the UK considered to be adequate.

66. Since Her Majesty's Government has no formal role in such cases, where appropriate, the FCO assigns a lawyer from its pro bono panel to work with a local lawyer to raise human rights concerns in court. The UK government will also consider making representations to the extraditing country to request that assurances similar to those outlined at paragraph 54 above are obtained.

67. In all cases, the UK Government would require written assurances, given by someone it judges sufficiently senior to be able to control the treatment of the British national.

68. Following an extradition, the UK government would expect to deal with British nationals in the same way as others extradited from the UK. No British national has been extradited from a third country on assurances related to torture in recent years, but a number have been extradited on assurances relating to the death penalty.

69. In line with the Foreign Secretary's formal statement in the House of Commons at the beginning of 2005, the UK government will always intervene where a British national may be extradited from a third country for an offence carrying the death penalty, even where the state considering the extradition request is another abolitionist state. But representations will, of course, be less formal in these cases.

Recommendation 5 (j): the State party should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the require ments of the Convention and that any breaches of the Convention that it becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction;

70. The UK Government has procedures in place, in line with this recommendation, to ensure that the conduct of its officials, including those conducting interviews at any overseas facility, is strictly in conformity with both domestic and international law, including the Human Rights Act, the UN Convention Against Torture, and where applicable the Geneva Conventions.

71. All UK officials are made aware that torture is prohibited in all circumstances. Furthermore, all UK personnel are instructed to report immediately to their superiors any activities carried out by UK personnel or those of any allies with whom they are operating that could be seen as torture or other cruel, inhuman or degrading treatment. Where such cases arise, the relevant Government Department would provide guidance on the appropriate action and ensure that concerns are reported to the relevant authorities, including Ministers and other Government Departments.

72. All allegations or suspicions involving activity of a criminal nature, including any apparent breaches of the Convention's prohibitions on torture, and cruel, inhuman and degrading treatment by UK officials, are taken seriously and investigated promptly and impartially. At all times, whether in the UK or overseas, UK officials are subject to English criminal law. They can therefore be subject to criminal proceedings for acts of torture, or cruel, inhuman or degrading treatment. For example, following allegations of mistreatment of Iraqi civilians by British armed forces at a humanitarian aid distribution centre near Basra in May 2003 three British servicemen were tried and convicted by court martial in February 2005.

73. Additionally, if British consular staff receive allegations that a British national has been mistreated by foreign authorities while in detention overseas, they are advised to raise these allegations with the Government concerned, taking into account the circumstances of the case. This is normally done by requesting that the detaining authorities undertake a prompt and impartial investigation and, where relevant, attention is drawn to the particular State's international obligations under the Convention.

74. During the oral examination of the UK's fourth periodic report, the UK delegation reported that the UK Parliamentary Committee on Intelligence and Security (ISC) were taking evidence on the issue of the handling of detainees by UK intelligence personnel. The ISC has since produced a comprehensive report on this subject, which included five recommendations, three of which relate to the Committee's C oncluding Observations. The Committee may be interested to see the UK Government's response to the ISC, which is at Annex 6 to this document.

Recommendation 5 (l): the State party should develop an urgent action plan, including appropriate resort to criminal sanctions, to address the subjects of concern raised by the Committee in paragraph 4(g) as well as take appropriate gender-sensitive measures;

75. The UK Government has given careful consideration to this recommendation. However it does not believe that the development of a large-scale, overarching plan such as the Committee appears to be recommending would be helpful in the general development of its custodial policy, or in dealing with the specific subjects identified by the Committee. In the Government's opinion, such a plan would be unwieldy and excessively difficult to co-ordinate and monitor. Individual Government Departments and the Devolved Administrations have already developed plans to address the subjects identified by the Committee, and the government believes that these are suitable and sufficient to bring about necessary improvements.

Deaths in Custody

76. Her Majesty's Prison Service for England & Wales (HMPS) has developed a strategy endorsed by Ministers to reduce the numbers of self-inflicted deaths in custody.

77. Deaths in custody are subject to a range of scrutinies: a Police Investigation; a Prisons & Probation Ombudsman (PPO) investigation; and a Coroner's inquest (held before a jury). In cases of deaths of young persons aged 15-17, a "serious case review" is carried out under Part 8 of the interdepartmental strategy "Working Together to Safeguard Children" (a copy of which is at Annex 7 to this document.

78. The following tables show comparisons for self-inflicted deaths in prisons in England and Wales from 1 January 2004 to 7 August 2005. The first shows total figures; the second shows figures for the same period within each year.

Gender	01/01/2004 to 31/12/04	01/01/2005 to 07/08/05
Male	82	49
Female	13	2
Total	95	51

Gender	01/01/2004 to 07/08/04	01/01/2005 to 07/08/05
Male	48	49
Female	11	2
Total	59	51

79. In Scottish Prisons, there were 19 deaths between April 2003 and April 2004, 19 deaths between April 2004 and April 2005, and 11 deaths between April 2005 and August 2005. The number of deaths in Scottish prisons has remained relatively static since 2000. However, against a background of an increasing prison population, the number of deaths has fallen as a proportion of the total number of prisoners. Figures for the last twelve years are given in the table below.

Period (Commencing April each year)	Number of deaths
94-95	26
95-96	17
96-97	27
97-98	19
98-99	21
99-00	26
00-01	16
01-02	18
02-03	16
03-04	19
04-05	19
April 05-Aug 05	11

80. In Northern Ireland, following the death in custody of a female prisoner in March 2004, the Director General of the Prison Service and the Chief Medical Officer commissioned a review of the six unnatural deaths in Northern Ireland Prison Service establishments between June 2002 and March 2004. An independent review group was set up in May 2004 chaired by Professor Roy McClelland, formally Professor of Psychiatry at Queen's University, Belfast, Northern Ireland. The terms of reference were to review healthcare and mental health provision to vulnerable prisoners particularly in the cases under scrutiny; to review communications between healthcare and other areas within prisons; and to examine the nature and effectiveness of healthcare services. The report and an action plan to address the 30 recommendations listed in the report were published on 23 January 2006. The report is attached at Annex 8.

81. In addition, the Northern Ireland Prison Service (NIPS) has asked the independent Prisoner Ombudsman to investigate all deaths in custody with effect from 1 September 2005. His reports will be published and made available to the Coroner. NIPS is committed to transparency and openness and welcomes the Prisoner Ombudsman's role as a further means of demonstrating this commitment.

82. A suicide and self-harm policy was introduced in March 2004. This is being updated to take account of the recommendations of the McClelland Report and also the findings of recent inspection reports.

Inter-prisoner violence

83. HMPS has a well-established violence reduction strategy and is committed to making prisoners feel safe within prisons in England and Wales. Since 2004 it has been mandatory for each prison to develop a strategy to reduce violence. This includes measures to reduce verbal abuse and bullying as well as physical assault. The following table gives a summary of the number of serious assaults in the last two financial years. In each of these years there was one homicide.

Type of Assault	2004-05	2003-04
Inmate on inmate	814	809
Others (e.g. on visitors, workmen)	3	20
Inmate on staff	188	197
Sexual	136	127
Total assaults	1141	1153
Population	74754	73679
Assault rate	1.53%	1.56%

84. In Scotland between January 2004 and July 2005, there were 127 serious prisoner on prisoner assaults and eight serious assaults on Prison Staff. The overall trend of violence in Scottish Prisons is down, despite an increased population.

85. In Northern Ireland following serious disturbances at Maghaberry Prison, the then Secretary of State commissioned a review of staff and prisoner safety in August 2003. The review was led by John Steele, a former head of the Northern Ireland Prison Service. His report in September of that year recommended voluntary separation, for safety reasons, of prisoners with paramilitary affiliations from each other and from the rest of the prison population. Government's acceptance of the Report led to the development of a "Compact" for separated prisoners, which was published following a period of public consultation. Loyalist and Republican prisoners were transferred to separated conditions in Bush and Roe Houses at Maghaberry Prison in March 2004. The Northern Ireland Prison Service carried out an internal review of the Compact and the regime and this was published for consultation on 31 January 2006 (The Review and its associated consultation document are attached at Annexes 9 and 10). Prisoners within the separated regime and staff at Maghaberry Prison were invited to submit written comments. In addition the prisoners' representative groups were invited to submit their views.

86. The NI Prison Service has safer custody arrangements in place in all Establishments, including policies on anti-bullying and suicide and self-harm and robust measures for the assessment of risk. Further work is ongoing to address concerns highlighted in recent CJINI/HMCIP inspection reports.

87. The Northern Ireland Prison Service Management Board has key targets, which are published in the Prison Service Corporate and Business Plan and are approved by the Minister. The 2005/2006 target for inter prisoner violence is that the number of prisoners assaulted by prisoners should be fewer than 4 assaults per 100 prisoners. The forecast result for 2005/06 is 0.4 assaults per 100 prisoners. The Service met the 2004/05 target of 6 assaults per 100 prisoners with final result of 0.9 assaults per 100 prisoners.

Overcrowding

88. In England and Wales, The prison population is managed within agreed operating capacities at each establishment. These are determined by Area Managers based on the total

number of prisoners an establishment can hold without serious risk to good order, security and the proper operation of the planned regime.

89. Population pressures can result in greater numbers of prisoners being required to share cells certified for single occupancy. However, it may sometimes be preferable that prisoners share cells - for example, to help care for those who may be at risk of self-harm. All prisoner accommodation is certified by Area Managers, in accordance with the performance standard on prisoner accommodation, which provides clear guidelines for determining cell capacities.

90. The impact of population pressures, including "overcrowding" in all prisons, is kept under careful review. The Government is responding to the changing prison population by:

a) expanding capacity;

b) reforming the correctional services, with the creation of The National Offender Manager Service (NOMS), to help balance demand with capacity;

c) providing, including via provisions in the Criminal Justice Act 2003, more effective options for sentencers, with effective and demanding community penalties.

91. Since 1997, nine new private sector prisons have been opened in England and Wales, providing around 7,500 places, and the capacity of the public sector prison estate has increased by around 11,000 additional places at existing prisons. The Government continues to investigate options for providing further increases in capacity over the coming years.

92. In May 2004 the Scottish Minister for Justice announced a package of measures to accelerate improvement in prison conditions in Scotland, to reduce overcrowding and make effective use of custody. The Scottish Executive is spending £1.5m per week on a phased programme to improve the existing prison estate. Around 500 modern places have been created in two new houseblocks at Edinburgh and Polmont, and work is continuing on two more at Edinburgh and Glenochil. Two new prisons are under construction, which will further reduce overcrowding by providing 1,400 modern places.

Slopping out

93. In 1996 Ministers announced that slopping out had ceased in England and Wales. All prisoners in normal accommodation have had access to sanitation since then in one of four ways:

a) Integral sanitation: a toilet and wash basin installed in a cell or in a separate annexe;

b) Open access: in open conditions prisoners can leave their rooms and use central toilet facilities;

c) Electronic unlocking: cell doors are opened electronically to allow prisoners access to toilet facilities;

d) Manual unlocking: staff are deployed to un-lock cells and allow prisoners access to toilet facilities.

94. Integral sanitation is installed at most prisons, but eleven have electronic unlocking systems in all or part of the establishment, and one prison uses manual unlocking for night sanitation on one of its wings.

95. Across the Scottish prison estate, slopping out has been substantially reduced in recent years. Since 2000, the number of prisoners slopping out has fallen from 1,900 to 1,000. By 2006 this figure will be reduced to 450. Slopping out at HMP Barlinnie ended in July 2004. It ended this summer at HMP Edinburgh and at HMP Perth. It will end at Polmont by the end of 2006. Since February 2005, no prisoner in Scotland has been required to share accommodation that does not have integral sanitation or access to night sanitation. Slopping out will end in Scotland about a year after the second of the two new prisons opens (see paragraph 86 above). The exact date will depend on getting appropriate planning consent and other related factors.

96. The Northern Ireland Prison Service has taken steps to facilitate access to toilets In Northern Ireland, at both Hydebank Wood and Magilligan, an electronic unlock system is in operation in houses that do not have access to in-cell sanitation. During lock-up periods, prisoners can be unlocked one-by-one when they wish to leave their cells to use the toilet facilities. At Hydebank Wood, NIPS is extending the provision of in-cell sanitation throughout the establishment. The redevelopment of Magilligan prison is being considered as part of the Service's ongoing Strategic Development programme. However, measures have been taken to improve existing arrangements to minimise any interference with the human rights of prisoners.

97. In a recent judicial review decision concerning a female prisoner at Hydebank Wood, who claimed that the lack of in-cell sanitation breached Article 8 (right to private and family life) of the European Convention on Human Rights, the court found that, on the basis of the evidence given, the facilities were adequate and took account of the prisoner's rights under Article 8.1 of the ECHR. However, as mentioned above, integral sanitation is now being installed throughout Hydebank Wood Young Offenders Centre and Prison.

98. A recent Judgment from Lord Justice Girvan in the case of a former prisoner, found in favour of NIPS in respect of Article 3 (Prohibition of Torture). However, Lord Justice Girvan found NIPS to be in breach of Article 8 (Right to respect for private and family life). He found that although the lack of in-cell sanitation does not in itself establish a lack of respect for the prisoner's privacy rights under Article 8, if the absence of such a facility is not properly managed and handled with care, it has the potential to be significantly demeaning to a prisoner in an intimate aspect of his private life. A Working Group has been set up to take forward the implementation of the outcomes identified and to examine the Human Rights implications of current arrangements.

Hydebank Wood Young Offenders' Centre and Prison

99. The Criminal Justice Inspector for Northern Ireland, Kit Chivers, and HM Inspector of Prisons, Anne Owers, carried out an unannounced inspection of Ash House (female prisoners), Hydebank Wood Young Offenders Centre and Prison in November 2004. The Inspection report was published on 16 May 2005 and is attached at Annex 11.

100. Since then, the Service has been addressing rigorously the concerns that have been raised in relation to conditions for women prisoners. A detailed action plan (attached at Annex 12) has been drawn up and published. This is updated regularly and significant progress has been made.

101. Plans for the treatment of women in custody are being developed strategically, including various reviews (of re-integration, health, offending behaviour etc) and the development of gender specific programmes and policies, such as:

a) Mother and baby;
b) Suicide and self-harm;
c) Child protection/public protection;
d) Resettlement;
e) Anti-bullying;
f) Induction;
g) First night;
h) Drugs and alcohol;
i) Foreign nationals;
j) Diversity.

102. Ash House now has a distinct gender specific identity, supported by a discreet management structure:

a) A Northern Ireland Prison Service female Governor dedicated to the management of female prisoners is now in place;

b) A female Governor, on secondment from HMPS, was appointed on 20 June 2005 to lead the development of the regime for Ash House.

103. Women prisoners have access to a full range of education, work and rehabilitative programmes specifically linked to the skills requirements of women prisoners, and which should enhance their prospects of acquiring employment upon release from custody. They also have access to a working out scheme.

104. The ratio of prison staff working with female prisoners is now 75% female and 25% male and prisoners have access to women staff at any time. Ash House prison staff are currently undergoing training designed to help them develop further their management of women prisoners. Training has already been delivered in issues such as working with vulnerable females, suicide awareness, mental health awareness, the management of aggression and dealing with mothers and babies.
