



**Rights Watch (UK) is an independent non-governmental organisation that has been providing support and services to anyone whose human rights were violated as a result of conflict.**

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

**To: Secretariat to the Committee, Human Rights Treaties Division (HRTD)**

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**Submission by Rights Watch(UK) to the UNCAT List of issues in connection with the consideration of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its forty-ninth session (29 October-23 November 2012)**

**Question 1: Formal incorporation of UN Convention against Torture and Other Cruel or Inhuman or Degrading Treatment**

- 1.1** The UK is still reluctant to incorporate the UN Convention against Torture and Other Cruel or Inhuman or Degrading Treatment (UNCAT) despite its partial incorporation of the European Convention on Human Rights (ECHR) through the Human Rights Act 1998 (HRA98). No adequate reason has been provided by the UK for this position. Incorporation of UNCAT would demonstrate a commitment to human rights by the UK government and also provide leadership in the international arena in this fundamental area of state impunity, accountability and protection.

**Question 2: Commitment to the European Convention on Human Rights and to the Human Rights Act 1998**

- 2.1** The UK government has reaffirmed that it 'remains committed to the ECHR and to ensuring that the rights contained therein continue to be enshrined in UK

law'.<sup>1</sup> Recent comments by leading senior politicians from within the Conservative Party about future pledges to leave the ECHR and repeal the HRA98 together with public criticism of human rights decisions by both UK courts and the European Court of Human Rights (ECtHR) would suggest otherwise. The current Home Secretary Theresa May MP said in a speech to Conservative Home on 9 March that 'by 2015, we'll need a plan for dealing with the European Court of Human Rights ... And yes, I want to be clear that all options – including leaving the convention altogether – should be on the table'.<sup>2</sup> The current Justice Secretary Chris Grayling MP was recently reported on 2 March 2013 as saying that he 'cannot conceive of a situation' where a future Conservative government would not repeal the Human Rights Act.<sup>3</sup>

There is a further danger of eroding of human rights commitment in the UK by the possible removal of public funding through legal aid of those cases which would challenge human rights violations by the state in both domestic cases and when the UK has a recognised mandate overseas.

### **Question 3: A Bill of Rights for Northern Ireland**

**3.1** A Bill of Rights for Northern Ireland which reflects the particular circumstances of Northern Ireland was part of the 1998 Belfast/Good Friday Agreement and the Northern Ireland Human Rights Commission delivered its advice to the British government in 2008 after an exhaustive public consultation. Whilst there may not be political will in Northern Ireland to deliver a Bill of Rights for Northern Ireland there is a widespread popular consensus and no foreseeable barriers to implementation.<sup>4</sup>

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<sup>1</sup> Response to the list of issues adopted by the Committee during its 49<sup>th</sup> Session by the United Kingdom of Great Britain and Northern Ireland (27 March 2013), para 2.1

<sup>2</sup> See Theresa May, Speech "We will win by being the party for all" (9 March 2013) available at <http://conservativehome.blogs.com/thetorydiary/2013/03/full-text-of-theresa-mays-speech-we-will-win-by-being-the-party-for-all.html>

<sup>3</sup> See The Daily Telegraph, "David Cameron answers critics: I will not lurch to the right" (2 March 2013) available at <http://www.telegraph.co.uk/news/politics/david-cameron/9904880/David-Cameron-answers-critics-I-will-not-lurch-to-the-Right.html>

<sup>4</sup> "The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland. Among the issues for consideration by the Commission will be: the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors." Available at: <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm#rights>

#### **Question 4: Interpretation of *Al-Skeini* and *Al-Jedda***

**4.1/4.5** The British government's interpretation of the jurisprudence of the ECtHR in both the judgments in *Al-Skeini* and *Al-Jedda* is partial and does not reflect the importance of the judgments. It is an interpretation of the letter rather than the spirit of the Strasbourg jurisprudence. In addition, its comments about the scope of UNCAT in relation to the ECHR demonstrates an attitude of bad faith by the British government.

#### **Question 7: Guidance to Intelligence Officers**

RW(UK) is concerned that the application of the Consolidated Guidance to Intelligence Officers is within the residual discretion of the relevant Minister as opposed to an independent authority. At present the Intelligence Security Commissioners (ISC) has oversight of the application of the Ministerial discretion after the events have taken place and operates on an Administrative (Executive) basis as opposed to an independent statutory basis. Our opinion is that the system described at 7.4 is cumbersome and skewed toward intelligence gathering as opposed to the protection of the integrity of the individual in the third state from who the intelligence is being sought.

#### **Question 12: Detention facilities in Afghanistan**

RW(UK) submits to the UNCAT Examination asks that the British government updates the UNCAT Examination on the status of the moratorium currently in place regarding transfer and treatment of detainees/prisoners/internees from *espace juridique* into to the authority of the Afghan government? In addition, can the British government ensure that when the moratorium is lifted the Afghan government will agree to inspection of detention facilities by the International Committee of the Red Cross?

#### **Question 20: Investigations into deaths by lethal force during Northern Ireland conflict and independence of inquiries under Inquiries Act 2005**

In June 2012 the Attorney General for Northern Ireland directed 21 new inquests into conflict-related deaths. On 15 November 2012 Northern Ireland's Senior Coroner suspended these inquests stating that the Attorney General for

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Northern Ireland had exceeded his legal powers in ordering the inquests which may raise national security concerns.<sup>5</sup>

The issue was referred to the Secretary of State for Northern Ireland under the transitional justice provisions following the Hillsborough Agreement 2010. Judicial review proceedings were initiated against the decision to suspend the inquests by four families of the victims and the Coroner removed the suspension on 11 February 2013. This has not been mentioned in the UK's response but raises fundamental questions about the jurisdictional scope of the Coroner vis-à-vis the Attorney General under the Coroners Act (Northern Ireland) 1959 when there is state involvement in the deaths.<sup>6</sup>

**20.5/20.6** RW(UK) notes that following public criticism of the Historical Enquires Team (HET) regarding its independence and accountability it has been subject to a review by Her Majesty's Inspectorate of Constabulary. Serious concerns have been raised regarding the appropriateness of the HET in investigating human rights violations where the state is responsible or was a party to collusion particularly in relation to the methods employed to investigate historical cases which have been investigated by the Royal Military Police (RMP) following actions by the British army throughout the conflict in Northern Ireland.<sup>7</sup>

## **Question 21: Investigations into torture and ill-treatment by UK forces in Iraq and Afghanistan**

### **Investigations**

RW(UK) emphasises the importance of conducting domestic investigations into credible allegations of torture and ill-treatment. The British government states in its response to the list of issues that allegations of offences under Schedule 2 of the Armed Forces Act 2006 must be handled according to established procedure and that there are a number of safeguards to ensure independence of investigations conducted by the service police forces.

However, for an investigation to have integrity and public confidence, the investigation of such allegations must be compliant with the procedural obligations arising from Article 2 of the ECHR.

### **Iraq**

**21.7/21.8** The Ministry of Defence established the Iraq Historic Allegations Team (IHAT) in 2010 to investigate allegations of mistreatment of individuals by HM Forces in

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<sup>5</sup> See BBC News, "Coroner Leckey suspends inquests into controversial killings" (15 November 2012) available at <http://www.bbc.co.uk/news/uk-northern-ireland-20340606>

<sup>6</sup> Coroners Act 1959 section 14

<sup>7</sup> See <http://www.hmic.gov.uk/publication/historical-enquiries-team-terms-of-reference/> and BBC News, <http://www.bbc.co.uk/news/uk-northern-ireland-17931059>, (2 May 2012)

Iraq between March 2003 and July 2009. Following the judgment of ECtHR in *Al-Skeini* a new team was established to investigate the allegations arising out of that case. RW(UK) observes that IHAT employs investigators from a private security firm have been employed to investigate these serious allegations of state human violations and RW(UK) question the appropriateness of this.

In November 2011, The UK Court of Appeal held in *R (on the application of) Ali Zaki Mousa v Secretary of State for Defence and Anor*<sup>8</sup> that the IHAT investigation process was not practically independent as required by Article 3 ECHR because the Provost Branch of the British Army was part of the IHAT investigation team. Following the judgment, the Secretary of State for Defence further re-structured IHAT, which is currently subject to a new judicial review challenge.<sup>9</sup>

**21.10** The Secretary of State for Defence maintains that criminal investigations are the appropriate way of identifying and prosecuting wrongdoing in these cases as opposed to a full public inquiry which cannot apportion criminal responsibility.<sup>10</sup>

RW(UK) makes a number of observations on this point. First, this approach prevents analysis of potential systemic institutional involvement in torture when there are potentially hundreds of victims. Second, it prevents analysis of the command principle meaning the investigation of the chain of command structure. Third, it is possible for the conclusions of an inquiry to be passed on to the relevant prosecuting authorities, as has occurred in the Baha Mousa Inquiry in England and in the Robert Hamill Inquiry in Northern Ireland. Fourth, a criminal investigation and prosecution does not necessarily fulfil the procedural obligation to investigate deaths under Article 2 ECHR.

RW(UK) submits to the UNCAT Examination that it requests from the UK government whether there are there any plans to conduct a public inquiry into allegations of mistreatment and torture of Iraqi nationals if the UK were to lose the pending decision in *Ali-Zaka Mousa (No.2)* (pending a possible application to the ECtHR) and if not how will the criticisms made against IHAT which have served to damage its credibility be countered?

## Inquiries

RW(UK) reiterates that where investigative procedures are inadequate the UK should pursue investigation through an independent mechanism of investigation such as a commission of inquiry. We emphasise the observations of UN Special Rapporteur on Torture (hereafter, UNSRT) that:

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<sup>8</sup> [2011] EWCA Civ 1334 (22 November 2011)  
*Ali Zaka Mousa (No.2) v SSHD* details available at  
[http://www.publicinterestlawyers.co.uk/news\\_details.php?id=291](http://www.publicinterestlawyers.co.uk/news_details.php?id=291)

<sup>10</sup> UNCAT Response to the list of issues adopted by the Committee during its 49<sup>th</sup> session by the United Kingdom of Great Britain and Northern Ireland (27 March 2013), para 21.10

“...a commission of inquiry can help to establish a more complete picture of how and why torture occurred by analysing not just the human, legal and political consequences of a state policy of torture but also by revealing insights into wider patterns of violations, institutional involvement and responsibility, and command responsibility, as well as provide valuable background information and leads to witnesses.”<sup>11</sup>

RW(UK) emphasise that all investigations undertaken by the UK must take into account the international framework.<sup>12</sup> Basic human rights standards require an inquiry to be prompt, independent, thorough and subject to public scrutiny with the participation of victims. The meaning of these can be found in the Istanbul Protocol,<sup>13</sup> which has been recognised as constituting international customary law,<sup>14</sup> the UN Special Rapporteur for Torture (UNSRT) Report on Commissions of Inquiry, jurisprudence of the ECtHR and UK Courts and, in part, from the procedure adopted by the Sir William Gage, Chair of the Baha Mousa Inquiry.

We set out what is required procedurally from an Inquiry before turning to the UK responses.

### **(1) Prompt**

An investigation must be prompt even in the absence of an express complaint. If there are other indications that torture or ill-treatment might have occurred then an investigation must be undertaken.<sup>15</sup>

The ECtHR has consistently held that a prompt response by authorities investigating allegations of ill-treatment is essential in maintaining public confidence in the state’s adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.<sup>16</sup> Furthermore, the right to an effective remedy (Article 13) must be effective in practice and in law, meaning that ‘its exercise must not be unjustifiably hindered by the acts or omissions of the authorities’.

### **(2) Independent**

Members of the inquiry should not have any association with an agency suspected of having practised torture or with any individual, political party or

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<sup>11</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (18<sup>th</sup> January 2012) A/HRC/19/61, para 52

<sup>12</sup> Ibid, para 47

<sup>13</sup> The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol) (9 August 1999)

<sup>14</sup> Claudio Grossman, “The Normative Value of the Istanbul Protocol”, *Shedding Light on a Dark Practice*, IRCT, 2009

<sup>15</sup> The Istanbul Protocol, para 79

<sup>16</sup> *Ali Zaki Mousa and others v Secretary of State for Defence* [2010] EWHC 3304 (Admin)

State agency potentially implicated.<sup>17</sup> Members should be selected on the basis of criteria designed to ensure independence and impartiality.<sup>18</sup>

The ECtHR has emphasised that an investigation into serious allegations of ill-treatment should be independent from the executive hierarchically, institutionally and practically.<sup>19</sup>

### **(3) Thorough**

#### ***Terms of Reference***

It has become standard practice in the UK for inquiries to publish a list of issues establishing the scope of the inquiry. The terms of reference should provide flexibility to ensure that investigation is 'not hampered by overly restrictive or overly broad terms of reference'.<sup>20</sup> The terms of reference should be controlled by the Chair to the Inquiry, not the executive, and receive input from the parties and from civil society. The terms of reference should not be restricted by previous litigation.

#### ***Disclosure***

The UNSRT recommends that the commission of inquiry 'must have the ability to inspect all documents in public agencies and archives, including those classified as secret or of limited distribution'.<sup>21</sup>

#### ***Complexity***

The ECtHR has consistently held that the purported complexity of cases involving ill-treatment does not relieve the state of the duty to investigate. In *Al-Skeini*, the court held that 'even in difficult security conditions, all reasonable steps must be taken to ensure that an effective, independent investigation is conducted into alleged breaches of the right to life'.<sup>22</sup> In *El-Masri* the court emphasised that '...while there may be obstacles or difficulties which prevent progress in an investigation in a particular situation' the investigative obligation remains essential.<sup>23</sup>

### **(4) Subject to public scrutiny**

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<sup>17</sup> The Istanbul Protocol, para 109

<sup>18</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (18<sup>th</sup> January 2012) A/HRC/19/61, para 60

<sup>19</sup> *Jordan v UK* (2003) 37 EHRR 2, para 106

<sup>20</sup> The Istanbul Protocol, para 107(c)

<sup>21</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (18<sup>th</sup> January 2012) A/HRC/19/61, para 65

<sup>22</sup> *Al-Skeini and Others v United Kingdom* (7 July 2011), para 164

<sup>23</sup> *El-Masri v The Former Yugoslav Republic of Macedonia* (13 December 2012), para 192

A public and open inquiry is 'crucial to building understanding and trust in the public in the methodology used'.<sup>24</sup> Exceptions should be based on the need to ensure confidentiality and security of victims or witnesses or where there is a legitimate national security interest and this decision must be transparent.<sup>25</sup> The UNSRT emphasises that 'under no circumstances should "secrets of State" be invoked as a justification to conceal the commission of human rights violations'.<sup>26</sup>

As upheld by ECtHR in *El-Masri*: 'there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory'.<sup>27</sup> This is considered an integral part of eradicating impunity.<sup>28</sup>

### **(5) Victim participation**

The Istanbul Protocol states that 'those carrying out the investigation must at a minimum, seek to obtain statements from the victims of alleged torture'.<sup>29</sup>

The procedural obligation under Article 2 ECHR has been held to mean that 'the victim's next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests'.<sup>30</sup> This has also been recognised as applicable to the procedural obligation under Article 3 ECHR.

### **The Inquiries Act 2005**

21.11 The UK government has expressly recognised that the Inquiry Rules 2006 are too prescriptive and could inhibit the flexibility of the Chair of the Inquiry in conducting an effective inquiry. The UK government concludes that individual chairmen have been able to 'devise pragmatic approaches to overcome practical difficulties'.<sup>31</sup> RW(UK) submit that while these pragmatic approaches may in some instances serve as examples of good practice, too much is left to the discretion of the individual Chair of the Inquiry. For example, RW(UK) observes how at present decisions on disclosure and public scrutiny are left almost entirely to the discretion of the Chair of the Inquiry. This is an

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<sup>24</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (18<sup>th</sup> January 2012) A/HRC/19/61, para 66

<sup>25</sup> The Istanbul Protocol, para 113

<sup>26</sup> Juan E. Méndez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (18<sup>th</sup> January 2012) A/HRC/19/61, para 66

<sup>27</sup> *El-Masri*, para 192

<sup>28</sup> See Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (30 March 2011)

<sup>29</sup> The Istanbul Protocol, para 77

<sup>30</sup> *Hugh Jordan v UK*

<sup>31</sup> UNCAT Response to the list of issues adopted by the Committee during its 49<sup>th</sup> session by the United Kingdom of Great Britain and Northern Ireland (27 March 2013), para 21.11



inadequate guarantee of a prompt, independent and thorough inquiry as required under human rights law.

We draw attention to examples of good practice in the Baha Mousa Inquiry. Sir William Gage was able to ensure a degree of institutional independence by entering into a Memorandum of Understanding with the relevant Minister of Defence, to prevent government interference in the conduct of inquiry. Sir William Gage also adopted a strong disclosure policy following the rationale and principles of the Freedom of Information Act 2005 whilst recognising that the Act does not officially apply to inquiries. Furthermore, Sir William Gage was able to employ a broad interpretation of his terms of reference.

These pragmatic approaches are useful as guidance for future inquiries but the Baha Mousa Inquiry can also be criticised for its failure to adequately protect witnesses or comply with the international standards of the Istanbul Protocol. It is therefore imperative that safeguards are in place to guarantee a prompt, independent, thorough inquiry which is subject to public scrutiny and grants victim participation as set out above.

RW(UK) submits to the UNCAT Examination that it proposes to the UK government that the Inquiries Act 2005 should be amended to remove the residual discretionary power of the relevant Minister under section 19 as a matter of priority and ensure compliance with the procedural obligations of Article 2 of the ECHR (and those being developed in relation to Article 3 of the ECHR) set out above.

RW(UK) maintains its criticism of the position of the British government in relation to future public inquiries under the Inquiries Act 2005 taking place in Northern Ireland (for example into the killing of Patrick Finucane in 1989). In addition we point to the future of the inquiry system in the UK a number of which of which have been instigated by individual claims made against the British government and which have been enabled through the availability of public funding for legal representation (we also note the absence of public funding for victims of state violations in the inquest system). The removal of public funding in the form of legal aid will affect many of these forms of application to challenge the UK government.

#### **Question 24: Cabinet Office: The Detainee Inquiry**

There is a suspended inquiry into whether, and if so, to what extent the UK government and its intelligence agencies were involved or otherwise complicit in the improper treatment or rendition of detainees held by other States in counter-terrorism operations in the aftermath of 11 September 2011.<sup>32</sup> The Inquiry was temporarily concluded pending completion of police investigations

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<sup>32</sup> The Detainee Inquiry, available at <http://webarchive.nationalarchives.gov.uk/20130106092456/http://www.detaineeinquiry.org.uk/>

in the matter.<sup>33</sup> We were among the ten human rights organisations which opposed the original terms of reference and urged that the inquiry be prompt, independent, thorough and subject to public scrutiny with the participation of victims.<sup>34</sup> The government maintains that it ‘does not agree with the views that have been expressed by some non-governmental organisations and others about the structure of the Detainee Inquiry, but will continue to engage with them over their concerns prior to any new inquiry being established’.<sup>35</sup>

RW(UK) submits to the UNCAT Examination that the UK government should be asked that if it is continue to engage with civil society will its position of the their views on the proposed structure of the inquiry remain unchanged and if so how can the views of the NGOs be accommodated?

While we acknowledge that the Detainee Inquiry is not established under the Inquiries Act 2005 and thus is subject to rules established by the Executive and not the judiciary, we urge that the UK government adopt the good practice procedure as set out above in compliance with the procedural obligations arising under Article 2 of the ECHR. In this respect we express concern that despite UK government assurances of transparency the interim report on the preparatory work of The Detainee Inquiry delivered to the Prime Minister on 27 June 2012 has still not been made available to the public, contrary to the rationale and principles of the Freedom of Information Act and antithetical to securing accountability. We support the UN Special Rapporteur on Torture at 53(d) of his Report which:

“Calls upon the Government of the United Kingdom to publish without further delay, and to the fullest extent possible, the interim report of the Gibson Inquiry; invites the United Kingdom to make a public statement indicating a timetable for the proposed judge-led inquiry, indicating what its terms of reference and powers will be; and recommends that the resumed inquiry has the powers and responsibilities outlined [in] the present report”.<sup>36</sup>

### **Question 25: The Baha Mousa Inquiry**

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<sup>33</sup> Statement made by the Lord Chancellor and Secretary of State for Justice (Mr Kenneth Clarke) Hansard HC, co 752 (18 January 2012) available at

<http://www.parliament.uk/business/news/2012/january/statement-on-the-detainee-inquiry/>

<sup>34</sup> Letter to Sir Peter Gibson Re: Inquiry into alleged UK involvement in the mistreatment of detainees held abroad (8 September 2010) available at <http://rwuk.org/inquiries/GibsonNGOInquiryLetter.pdf>

<sup>35</sup> UNCAT Response to the list of issues adopted by the Committee during its 49<sup>th</sup> session by the United Kingdom of Great Britain and Northern Ireland (27 March 2013), para 24.2

<sup>36</sup> Ben Emmerson, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (1 March 2013)

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf)

RW(UK) observes the response of the UK that 'work continues, at pace, to implement the remaining 20%' of the Baha Mousa Inquiry recommendations.<sup>37</sup>

RW(UK) submits to the UNCAT Examination that the UK government provides further detail of the remaining 20% of recommendations to be implemented following the Baha Mousa Inquiry and what is the proposed timescale for the implementation of the remaining 20% of recommendations?

### **Question 26: MOD: The Al-Sweady Inquiry**

RW(UK) observed the opening hearings of the Al-Sweady Inquiry which commenced on 4 March 2013 and is expected to report by the end of 2014. RW(UK) draws attention to the ruling of the Chairman, Sir Thayne Forbes, on 12 March 2013 rejecting an overly prescriptive interpretation of the Terms of Reference of the Inquiry and leaves open the possibility of making broader findings on allegations brought outside of the initial judicial review proceedings and by non-claimant detainees.<sup>38</sup> RW(UK) welcomes this approach and urges that the Sir Thayne Thorbes to continue to interpret the scope of Inquiry broadly to address the general institutional nature of abuse in line with the approach adopted by Sir William Gage in the Baha Mousa Inquiry, subject to the criticisms we have made above.

The UK government has claimed that the Ministry of Defence 'has complied scrupulously with its obligations to furnish the inquiry with all the material it requires'.<sup>39</sup> RW(UK) draw attention to the opening submissions of counsel for the Iraqi core participant victims<sup>40</sup> which strongly criticised the failure of the Ministry of Defence to disclose to the Inquiry and the failure of both the Inquiry investigative team and the Ministry of Defence to disclose to the Core Participant victims. Criticisms concerned the lateness of disclosure and inadequacy of disclosure including the whole scale destruction of relevant material documentary evidence by the Ministry of Defence.

### **Non-jury trial provisions in Northern Ireland**

After examination of the Fourth Periodic Report for the United Kingdom and Northern Ireland, the Committee identified the continuing emergency powers in Northern Ireland as a subject of concern:

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<sup>37</sup> UNCAT Response to the list of issues adopted by the Committee during its 49<sup>th</sup> session by the United Kingdom of Great Britain and Northern Ireland (27 March 2013), para 25.3

<sup>38</sup> Chairman Ruling re Terms of Reference (12 March 2013) available at [http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/key\\_documents/130312chairmansrulingretermsofreference.pdf](http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/key_documents/130312chairmansrulingretermsofreference.pdf)

<sup>39</sup> UNCAT Response to the list of issues adopted by the Committee during its 49<sup>th</sup> session by the United Kingdom of Great Britain and Northern Ireland (27 March 2013), para 26.2

<sup>40</sup> Opening Submissions by Mr O'Connor (11 March 2013) available at [http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/oral\\_hearings/al110313fulldayinpublic.pdf](http://www.alsweadyinquiry.org/linkedfiles/alsweadyinquiry/oral_hearings/al110313fulldayinpublic.pdf)

“... with respect to Northern Ireland, the absence of precise information on the necessity for the continued emergency provisions for that jurisdiction contained in the Terrorism Act 2000.”<sup>41</sup>

The Northern Ireland-specific provisions referred to were repealed on 31 July 2007 as part of a security normalisation programme. However, a limited form of non-jury trial was retained under the Justice and Security (Northern Ireland) Act 2007, sections 1-9. The Director of Public Prosecutions for Northern Ireland (DPP (NI)) can issue a certificate for non-jury trial if he suspects that any of the stated conditions are met and is satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury. The system of non-jury trial is temporary and renewable for a period of two years with the agreement of Parliament.

Between the 14 February 2013 and 14 March 2013 the Secretary of State for Northern Ireland conducted a consultation on whether to renew the non-jury trial provisions. RW(UK) submitted a response<sup>42</sup> noting the short period of consultation and lack of public engagement. We submitted that there was no evidence of a continuing need for the emergency powers given the improvements in the security situation in Northern Ireland and observed that the current test applied by the DPP (NI) is not based on objective and reasonable grounds. We called for the regime to be brought in line with the regime in England and Wales under the Criminal Justice Act 2003, s44 to continue the move towards security normalisation in Northern Ireland. The Secretary of State for Northern Ireland is expected to make a decision in April 2013.

RW(UK) submits to the UNCAT Examination that its ask the UK government to clarify what is the position of the Secretary of State for Northern Ireland regarding the renewal of the non-jury trial provisions? What other measures are planned to continue the move towards security normalisation in Northern Ireland?

***RW(UK) 19 April 2013***

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<sup>41</sup> UNCAT Fifth Periodic Report of State Parties due in 2008, United Kingdom of Great Britain and Northern Ireland (6 September 2011), para 29(c)

<sup>42</sup> Rights Watch (UK), “Submission to the Secretary of State for Northern Ireland re non-jury trial provisions in Northern Ireland” (14 March 2013) available at <http://www.rwuk.org/pdf/non-jury-trial-arrangements-for-Northern-Ireland-submission-mar-2013.pdf>

