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EXECUTIVE SUMMARY

This submission contains information for the attention of the Human Rights Committee (the Committee) in advance of the examination of the United Kingdom of Great Britain and Northern Ireland (hereafter the United Kingdom or UK), at the 114th session of the Committee to be held between 29 June and 24 July 2015.

The submission relies significantly on Amnesty International's pre-sessional briefing to the Committee,¹ which members will already have seen; as a result this briefing provides updates – marked clearly **in bold** – which are likely to be of interest to the Committee.

PLANNED REPEAL OF THE HUMAN RIGHTS ACT 1998 – ART 2

UPDATE: Following the General Election on 7 May 2015, the United Kingdom now has a majority Conservative Government. The Conservative party 2015 manifesto contained not only the commitment to "scrap the Human Rights Act", but as part of that, to "curtail the role of the European Court of Human Rights".² The Queen's Speech on 27 May 2015 did not contain any concrete legislative plans, but confirmed that the new government will "bring forward proposals for a British Bill of Rights".³ The Human Rights Act builds on a strong tradition of human rights protections in UK law and 'brings rights home', by allowing people in the UK to exercise their rights enshrined in the European Convention (ECHR) under UK law and in UK courts.

The Act is simple, effective and has undoubtedly contributed to the respect and protection of human rights in the UK. Proposals to replace the Human Rights Act with what appears to be a significantly different 'British Bill of Rights', are of significant concern to Amnesty International as the proposals suggested are not merely cosmetic, and instead threaten to constrict fundamental safeguards. Amnesty International is strongly of the view that these are dangerous and unnecessary proposals that risk undermining the protection of human rights in the UK.

Amnesty International is also concerned about the impact that introducing a British Bill of Rights will have on the UK's relationship with the European human rights system. Merely repealing the domestic Act would not change the UK's international obligations under Article 46 of the ECHR, which states that signatories must 'abide by' the rulings of the European

¹ Amnesty International, *United Kingdom: Pre-sessional briefing to the UN Human Rights Committee*, (AI Index: TIGO IOR 40/2014.100), 25 July 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fICO%2fGBR%2f17843&Lang=en

² The Conservative Party manifesto 2015, page 60.

³ Queen's Speech, 27 May 2015 can be accessed here: <https://www.gov.uk/government/speeches/queens-speech-2015>

Court of Human Rights. The UK, according to international law, may not invoke provisions of internal law regarding a violation to a treaty to which it has previously acceded.⁴ The Court's rulings cannot become merely 'advisory' and refusal to abide by its decisions would result in the UK flouting its obligations and the rule of law. These proposals could result in the UK having to leave the ECHR altogether, which would be an unprecedented regressive step that would result in lesser protections for people in the UK and a denial of access to justice and reparations when these rights have been denied domestically.

Furthermore, the repeal of the Human Rights Act could have serious implications for Northern Ireland's peace settlement. The 1998 Good Friday/Belfast Agreement obliged the UK to incorporate the European Convention of Human Rights into law in Northern Ireland, which was subsequently done through the Human Rights Act. The Northern Ireland Assembly can only make laws which are compatible with the Human Rights Act, a key safeguard in the region. New policing arrangements in Northern Ireland, introduced after the Good Friday/Belfast Agreement, are also heavily reliant on adherence to the Human Rights Act and the ECHR. Trust in the new policing structures in Northern Ireland is seen as one of the key success stories of the peace process. Repeal of the Human Rights Act could undermine public confidence in these new political and policing arrangements.

ACCOUNTABILITY FOR DEATHS, TORTURE AND SERIOUS INJURIES IN NORTHERN IRELAND – ART 2, 6 & 7

In July 2008, the Committee recommended that the United Kingdom establish or conduct "independent and impartial inquiries in order to ensure a full, transparent and credible account of the circumstances surrounding violations of the right to life in Northern Ireland".⁵ In the years since the Committee's concluding observations, successive Secretaries of State for Northern Ireland have refused to establish public inquiries, either under the Inquiries Act 2005 or on a non-statutory basis, into several incidents that led to the loss of life at the hands of state officials, armed groups, or in circumstances which have involved the collusion of state actors.

The systemic failure to ensure accountability for violations of the right to life in Northern Ireland is well demonstrated by the case of Patrick Finucane. In this case, the UK government had promised an inquiry in accordance with the conclusions of the Cory Collusion Inquiry. In spite of this commitment, the UK government has refused to establish an independent, public inquiry, opting instead to set up a document-based review in which

⁴ Vienna Convention on the Law of Treaties, article 46.

⁵ Human Rights Committee, Concluding Observations on the UK, CCPR/C/GBR/CO/6, July 2008, para. 6.

the Finucane family did not have confidence.⁶ In May 2015, a judicial review brought by the family of Patrick Finucane over the UK government's failure to hold a public inquiry was heard before the High Court of Justice in Northern Ireland. Judgment has been reserved.

In September 2013, Amnesty International published a report entitled *Northern Ireland: Time to Deal with the Past*.⁷

The report concluded that the patchwork system of investigation—made up of the Historical Enquiries Team (now defunct), the Office of the Police Ombudsman for Northern Ireland, coroner's inquests, public inquiries and criminal investigations by the Police Service of Northern Ireland (PSNI)—that has been established in Northern Ireland is not fit for the purpose of comprehensively and systematically addressing past human rights violations and abuses, including violations of the right to life.⁸ The fragmented and incremental approach to establishing the truth and providing victims with remedy - all too often subject to protracted legal disputes, inadequate disclosure and resultant delay at several stages - has exacerbated the lack of a shared public understanding and recognition of the violations and abuses committed by all sides.

The report called on the UK government to establish a mechanism capable of ensuring that all allegations of human rights violations and abuses committed in the past are investigated in a prompt, impartial, independent, thorough and effective manner; and to ensure that any such mechanism is able to investigate overall patterns of abuse, policy and practice of state and non-state actors, identify those responsible at all levels and issue recommendations aimed at securing victims' right to an effective remedy, including full reparation. Such a mechanism should provide truth, justice and reparation for all those who suffered torture or other ill-treatment or were seriously injured during the three decades of political violence, and who have to date been largely excluded from the mandates of existing accountability mechanisms

Between September and December 2013, the Northern Ireland Executive organized inter-party talks, on a number of contentious issues including dealing with the past, chaired by an independent external chair, the former US diplomat Dr Richard Haass. The results of the talks were inconclusive at the time the Chair published a draft proposal at the conclusion of the talks in December 2013. On the issue of "dealing with the past", however, the draft proposal in general provided a solid basis from which to proceed with efforts to deliver truth and justice for victims and their families and Amnesty International has urged the Northern Ireland political parties and the UK government to take them forward through legislation. In

⁶ United Kingdom/Northern Ireland: *Still no public inquiry twenty-five years after the killing of Patrick Finucane*, EUR 45/003/2014, 12 February 2014, <http://www.amnesty.org/en/library/info/EUR45/003/2014/en>

⁷ *Northern Ireland: Time to deal with the past*, AI Index: EUR 45/004/2013/, available here; <http://www.amnesty.org/en/library/info/EUR45/004/2013/en> (A full copy of this report will be provided to the Committee in advance of its session).

⁸ Some of these concerns are reflected in the following documents by other organizations: "Joint Submission by the Committee on the Administration of Justice (CAJ) and the Pat Finucane Centre (PFC) in relation to the supervision of cases concerning the action of the security forces in Northern Ireland, February 2012; "An inspection of the Office of the Police Ombudsman for Northern Ireland", report by the Criminal Justice Inspectorate, September 2011 and its follow-up report: "The independence of the Office of the Police Ombudsman for Northern Ireland: A follow-up review of inspection recommendations", January 2013.; Her Majesty's Inspectorate of Constabulary, Inspection of the Police Service of Northern Ireland Historical Enquiries Team, 3 July 2013, and on the case of Patrick Finucane: Amnesty International press release, *De Silva report makes strongest case yet for full inquiry into Finucane killing*, 13 December 2012, and public statement, *United Kingdom/Northern Ireland: Deplorable government decision to renege on promise of public inquiry into Finucane killing*, AI Index EUR 45/017/2011, 13 October 2011.

particular, the proposal to establish a Historical Investigations Unit (HIU) and an Independent Commission for Information Retrieval (ICIR) has the potential to advance efforts to secure truth and justice for victims of human rights violations and abuses, although some work still needs to be done to ensure these mechanisms operate in full compliance with the Covenant.⁹

THE STORMONT HOUSE AGREEMENT

UPDATE: Following the failure of the Haass talks, the five executive parties in Northern Ireland, and the UK and Irish governments continued negotiations, chaired by the Secretary of State for Northern Ireland, Theresa Villiers. As a result of these negotiations, on 23 December 2014 the UK government published the Stormont House Agreement, which contained proposals on a number of political issues in Northern Ireland, including on how to deal with the past.¹⁰

The Stormont House Agreement contains proposals for the establishment of two primary mechanisms to investigate the past: a Historical Investigations Unit (HIU) and an Independent Commission for Information Retrieval (ICIR). It also contains proposals to establish an Implementation and Reconciliation Group, which will oversee the establishment and work of an Oral History Archive, amongst other things.

Amnesty International believes that the very fact that an agreement has been reached on how to deal with the past in Northern Ireland is an important step. Crucially, the Agreement also outlines a number of important principles that will be respected in the establishment of mechanisms to deal with the past, including “upholding the rule of law”, “acknowledging and addressing the suffering of victims and survivors”, “facilitating the pursuit of justice and information recovery”, “is human rights compliant”, and “is balanced, proportionate, transparent, fair and equitable”.¹¹ These principles bring a measure of hope that robust investigatory mechanisms can be built. However, it must be emphasised that as the proposals stand there are a number of concerns that must be addressed in order for any mechanism that emerges to be truly independent, effective and ultimately capable of discharging the UK’s obligations under the ICCPR and other international human rights law.

Amnesty International’s primary focus concerns the HIU as the primary investigatory mechanism proposed in the Agreement. The Agreement states that the HIU will be a new independent body to take forward investigations of outstanding cases from the Historic Enquiries Team (HET) and the legacy work of the Police Ombudsman of Northern Ireland (PONI). Following an investigation a report will be produced in each case. In its criminal investigations the HIU will have full policing powers and with respect to cases from PONI, the HIU will have equivalent powers to that body. The HIU would be overseen by the Northern Ireland Policing Board. It is proposed that it should aim to conclude its work in five years.

⁹ For a detailed analysis of the human rights compliance of two accountability mechanisms (the HIU and the ICIR) proposed in the draft document published following the conclusion of the inter-party talks, please see *United Kingdom/Northern Ireland: Haass proposals on dealing with the past*, EUR 45/001/2014, 5 February 2014, <http://www.amnesty.org/en/library/info/EUR45/001/2014/en>.

¹⁰ The Stormont House Agreement can be accessed here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf

¹¹ Stormont House Agreement, page 5.

With respect to the proposals for the HIU, Amnesty International would draw the Committee's attention to the following (non-exhaustive) points:

- It is imperative that the HIU's remit not be interpreted too narrowly to focus only on criminal culpability, but also has a wider investigative function that reflects broader human rights obligations, i.e. the investigation must not only be capable of leading to the identification and punishment of the perpetrators, it must also ensure the full facts of the case under investigation are brought to light. This should include identifying whether the state breached its human rights obligations, for example, by having failed to effectively investigate a death to date.
- The HIU must be able to re-investigate all cases where the previous investigation has been flawed. At present investigations of cases that have been dealt with by other bodies appear limited to situations where new evidence has emerged.¹² A process should be adopted to allow families who believe that investigations were flawed to seek a separate investigation of the case by the HIU.
- The Agreement states that the HIU will take forward investigations "into outstanding Troubles-related deaths", leaving a striking omission with respect to cases of those who were seriously injured and those who were tortured or ill-treated.¹³ As the Committee states in General Comment 31, states parties have a general obligation to investigate all allegations of violations of the ICCPR.¹⁴ This obligation is not limited to violations of the right to life. Indeed, the Committee has stated that the obligation to investigate and bring those responsible to justice applies to certain violations, including torture and similar cruel,

12 The Stormont House Agreement states that the HIU will also investigate HET cases which have already been identified as requiring re-examination. This has been clarified as referring to those cases identified by the 2013 report by Her Majesty's Inspectorate of Constabulary as needing investigation (See Queen's Speech 2015: background briefing notes, page 55). Amnesty International believes there is a much wider number of HET cases which may need reinvestigation.

13 One notable case is that of the 'Hooded Men', the name used to describe the victims of torture and other ill-treatment in UK internment in Northern Ireland in 1971 and 1972, as a reminder of the now infamous 'five techniques' to which they were subjected (*Ireland v. United Kingdom*, (Application no. 5310/71), European Court of Human Rights, 18 January 1978, Judgment, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57506> and European Commission of Human Rights, Report (Plenary), 25 January 1976, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-73559>). On 4 June 2015, the High Court in Belfast granted leave for the surviving 'Hooded Men' and next of kin of those since deceased to challenge the failure by the UK government to establish an ECHR Article 3 compliant investigation into their torture and other ill-treatment in internment over 40 years previously (See: Press release, Northern Ireland: Amnesty calls on UK government to investigate torture of 'hooded men', 4 June 2015, <http://amnesty.org.uk/press-releases/northern-ireland-amnesty-calls-uk-government-investigate-torture-%E2%80%98hooded-men%E2%80%99>). The men's case had previously been the subject of the seminal European Court of Human Rights ruling in *Ireland v United Kingdom* delivered in 1978. In December 2014, the Irish government took the unprecedented step of requesting the European Court of Human Rights to review its 1978 judgement (see: Press release, "Amnesty commends Irish government's decision on 'Hooded Men' case," 2 December 2014, <http://amnesty.org.uk/press-releases/amnesty-commends-irish-governments-decision-hooded-men-case>). The Irish government's decision followed important new revelations by the Irish broadcaster RTÉ in June 2014 alleging that the UK did not disclose all relevant evidence to the European Court (Press release, "Northern Ireland: response to RTÉ documentary allegations on UK and torture," 5 June 2014, <http://amnesty.org.uk/press-releases/northern-ireland-response-rt%C3%A9-documentary-allegations-uk-and-torture>), and subsequent calls by the surviving 'Hooded Men' and civil society organizations for a review of the judgment (Press Release, "Landmark 'Hooded men' torture case should be re-opened," 24 November 2014, <http://amnesty.org.uk/press-releases/landmark-hooded-men-torture-case-should-be-re-opened>). Amnesty International was one of the first organizations to document the abuses suffered by the men in internment in the 1970s (see Thomas Hammarberg, "Time to end 40 years of impunity for torture of 'Hooded Men,'" 1 December 2014, <http://amnesty.org.uk/blogs/belfast-and-beyond/time-end-40-years-impunity-torture-%E2%80%98hooded-men%E2%80%99>).

14 Human Rights Committee, General Comment 31, para. 15.

inhuman and degrading treatment.¹⁵ Investigations of allegations of torture are required by the Convention against Torture.¹⁶ The European Court has found in a number of cases that states parties have a duty to investigate life-threatening attacks¹⁷ and torture or ill-treatment¹⁸ by both state and non-state actors. The HIU should be mandated to investigate such cases.

- The term collusion must be defined in a way that accurately reflects the range of methods by which state authorities and officials may support or facilitate the commission of human rights abuses by non-state actors. Past attempts to limit the definition of collusion, which have frustrated efforts to seek state accountability for past human rights violations, must not be repeated.¹⁹
- The Agreement highlights independence as one of the principles by which the HIU will operate. However, further thought must be given as to how this can be fully realised in practise. This should include ensuring those who investigate cases are independent from those persons or institutions potentially implicated in events and that procedures for guaranteeing all relevant sensitive intelligence is provided to the investigation function in an independent manner.
- The Agreement states that the UK government will make full disclosure to the HIU and importantly this obligation is not subject to an express national security caveat – save ensuring that no individuals are put at risk and the more ambiguous “to keep people safe and secure”. Given the historical failures by state bodies to consistently ensure full disclosure of sensitive material to investigations it is important that the draft legislation has express provisions placing an obligation on all public authorities (including the security services) to provide material to the HIU and cooperate fully with it.
- In its investigations the HIU must also be able to investigate links between cases and reflect any findings in this regard in a thematic section in its reports. Many killings did not happen in isolation, and in some cases it is only through links between cases that the full facts of a case can be accurately established and questions concerning patterns of incidences and systemic issues can be answered.
- There should be explicit guarantees of sufficient resources for the HIU to carry out its

15 Ibid., para. 18.

16 Article 12 requires states parties to proceed with “a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

17 See, for example: Angelova and Iliev v. Bulgaria, no. 55523/00, 26 July 2007, §98 and Makaratzis v Greece, no. 50385/99, 20 December 2004, §§73-74. See also: R (JL) v Secretary of State for the Home Department [2006] EWHC 2558 (Admin), §19; Green v Police Complaints Authority [2004] UKHL 6, §9; D v Secretary of State for the Home Department [2006] EWCA Civ.

18 The European Court of Human Rights has decided in numerous cases that “where an individual raises an arguable claim that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation” (see: Asenov and Others v. Bulgaria, 28 October 1998, §102, Reports of Judgments and Decisions 1998-VIII; Corsacov v. Moldova, no. 18944/02, 4 April 2006, §68; and El-Masri v The Former Yugoslav Republic of Macedonia, no. 39630/09, 13 December 2012, §182).

19 See Amnesty International report, *Northern Ireland: Time to deal with the past*, (AI Index: EUR 45/004/2013) pp. 47 – 48 for detailed discussion of past attempts to narrow the definition of collusion in investigations.

work effectively and promptly. The £150 million pledged by UK government may well be insufficient and also suggests that when the money runs out – more money may not be forthcoming.

Amnesty International believes that the Stormont House Agreement represents an opportunity to deliver effective investigatory mechanisms to investigate human rights abuses and violations that arose from Northern Ireland's political conflict. However, for this to become a reality all the Northern Ireland executive parties and the UK government must commit to ensuring that the resultant mechanisms truly comply with human rights law and standards and do not simply repeat past mistakes

USE OF UK TERRITORY FOR RENDITION FLIGHTS AND UK AUTHORITIES' INVOLVEMENT IN TORTURE AND OTHER ILL-TREATMENT OF PEOPLE DETAINED OVERSEAS IN COUNTER-TERRORISM OPERATIONS – ART 2 & 7

The UK government and intelligence agencies have faced a growing number of allegations, including in claims brought in domestic courts by individual victims and as a result of investigative work by NGOs and journalists, of their involvement in human rights violations of people detained overseas since 11 September 2001. The allegations include involvement in torture and other ill-treatment, arbitrary detentions, enforced disappearance, and renditions of individuals detained overseas in the context of counter-terrorism operations.

In spite of the Committee's prior recommendation that the UK "investigate allegations related to transit through its territory of rendition flights [...]"²⁰, to date, no genuinely independent, public inquiry has been established into that and other related allegations of UK involvement in serious human rights violations of people detained overseas in the context

²⁰ CCPR/C/GBR/C/0/6, para. 13.

of counter-terrorism operations.

In July 2010, the UK Prime Minister David Cameron announced that he would establish an inquiry (which was later named the 'Detainee Inquiry') into the allegations of involvement of members of the UK intelligence services and other officials in torture and other human rights violations. One year later, on 6 July 2011, the UK government confirmed the terms of reference and protocol for the Detainee Inquiry.²¹ Amnesty International raised concerns that the protocol did not meet international human rights standards because the government would have retained the final say over disclosure of material relating to national security, which was very broadly defined. This government control over disclosure led to criticism that such executive power would undermine the Inquiry's independence and effectiveness.²² In August 2011, Amnesty International and nine other NGOs wrote a letter to the Solicitor to the Detainee Inquiry stating that, given the Inquiry's shortcomings, the NGOs would not cooperate with it.²³ Lawyers acting for the individuals who have alleged that they were tortured or otherwise ill-treated also advised their clients that they should not participate in an Inquiry that lacked independence. In January 2012, following further revelations about UK involvement in renditions to Libya and subsequent criminal investigations by the UK police, the UK Justice Secretary announced that the Detainee Inquiry was not capable of completing its task and that it should be closed.²⁴

In December 2013, a report on the Detainee Inquiry's preparatory work was published, after significant delay. The report set out lines of investigation for any future Inquiry to explore in greater detail.²⁵ The UK government announced that the matters raised by the Detainee Inquiry's report would be addressed by the Intelligence and Security Committee (ISC) of the UK Parliament, rather than by an independent, public inquiry. The ISC is yet to begin its inquiry, however, it has previously failed to fully investigate – or was not provided adequate information to fully investigate – prior allegations of torture and other ill-treatment and rendition in the context of counter-terrorism and national security. Despite some changes to the powers of the ISC following the enactment of the Justice and Security Act 2013, the government still retains the right to withhold information from the ISC where material is considered to be "sensitive" or on grounds of national security (Schedule 1 (4)(5)), and

²¹ These documents, published on 6 July 2011, are available to download directly from the Detainee Inquiry's website: <http://www.detaineeinquiry.org.uk/2011/07/news-release-terms-of-reference-and-protocol-published/>. For the formal ministerial statement, see Hansard, 6 July 2011, Column 100WS: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110706/wmstext/110706m0001.htm#11070675000064>.

²² United Kingdom: *Detainee Inquiry terms of reference and protocol fall far short of human rights standards*, AI Index EUR 45/011/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>.

²³ UK: *Joint NGO letter to the Solicitor to the Detainee Inquiry*, AI Index EUR 45/010/2011, August 2011, <http://www.amnesty.org/en/library/info/EUR45/010/2011/en>.

²⁴ The formal ministerial statement can be found in Hansard, 18 January 2012, Column 751-760, <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120118/debttext/120118-0001.htm>. See also Statement by Chairman of the Detainee Inquiry, 18 January 2012, <http://www.detaineeinquiry.org.uk/2012/01/statement-by-the-chairman-of-the-detainee-inquiry/>; and UK: *Detainee Inquiry closure presents an opportunity for real accountability*, AI Index EUR 45/005/2012, 18 January 2012, <http://www.amnesty.org/en/library/info/EUR45/011/2011/en>.

²⁵ The full report can be downloaded here: <http://www.detaineeinquiry.org.uk/2013/12/report-of-the-detainee-inquiry/>. For Amnesty International's response to the report's publication, see: UK: *Decision to hand torture inquiry to intelligence committee strongly criticised*, Press Release PRE01/667/2013, 19 December 2013, <http://www.amnesty.org/en/for-media/press-releases/uk-decision-hand-torture-inquiry-intelligence-committee-strongly-criticised> and United Kingdom: *Joint NGO letter regarding the parliamentary Intelligence and Security Committee's examination of allegations of UK complicity in torture and other ill-treatment of detainees held overseas*, AI Index EUR 45/005/2014, 7 April 2014, <http://amnesty.org/en/library/info/EUR45/005/2014/en>.

retains the right to exclude material “prejudicial to the continued discharge of the functions [of the intelligence agencies]” (Section 3.4) from publication in any report published by the ISC. The UK government’s position to date has been that “it would not be possible to initiate an inquiry while related police investigations continue,” but that “the Government has left open the question of whether there should be a further judge-led inquiry pending the outcome of the [ISC’s] follow up work”.²⁶

In November 2010, the UK Justice Secretary announced financial payments to 16 UK nationals or residents as part of a mediated settlement of civil damages claims brought by individuals previously detained in Guantánamo Bay. The terms of the settlement remain confidential. In response to these civil damages claims, the Detainee Inquiry, and related litigation, the UK parliament enacted the Justice and Security Act 2013, which will be addressed in further detail below.

Amnesty International would like to call to the Committee’s attention the need to ensure that any new inquiry initiated by the UK be in line with its obligations under Articles 2 and 7 of the Covenant, and that it should avoid the many deficiencies of the Detainee Inquiry.²⁷

UPDATE: On 30 October 2014, nine NGOs including Amnesty International, provided a submission to the ISC stating that the NGOs in question would not be playing a substantive role in the conduct of the inquiry.²⁸ The NGOs highlighted that the concerns about the role of the ISC in the investigation of the treatment of detainees and UK’s involvement in renditions remained. The organizations also expressed their disappointment over the decision by the UK government to in effect renege on its promise of carrying on an independent judicial inquiry and considered that the ISC would not be the adequate body to carry out an effective and impartial investigation as required under international law.

Abdul-Hakim Belhaj -- former high-ranking opposition commander during the armed conflict in Libya and current head of Libya’s al-Watan Party -- has been pursuing a claim that British officials were complicit in his alleged abduction, illegal transfer to Libya and torture as part of the CIA’s rendition programme in 2004. During his six-year detention in Libya, he was allegedly beaten, hung from walls, cut-off from human contact and daylight, and sentenced to death. His wife, Fatima Boudchar, was also rendered to Libya, detained and denied proper medical care despite being pregnant at the time.

In December 2013, the High Court held that the “act of state” doctrine, a rule of common law, prevented a court from judging the acts of foreign states committed on their own territory and ruled that the Belhaj case could not go forward in the UK courts. Belhaj appealed the High Court decision to the UK Court of Appeal. In October 2014, the UK Court of Appeal ruled to allow the Belhaj appeal, concluding that there were compelling reasons requiring it to exercise jurisdiction over the Belhaj allegations. As the Court affirmed, “the stark reality is that unless the English courts are able to exercise jurisdiction in this case, these very grave allegations against the executive will never be subjected to judicial investigation,” and Belhaj and Boudchar “would be left without any legal recourse or remedy”

²⁶ Letter from William Hague, Secretary of State for Foreign and Commonwealth Affairs to Amnesty International, 4 May 2014.

²⁷ For a detailed analysis of the deficiencies of the Detainee Inquiry, please see AI Index: EUR 45/011/2011

²⁸ *United Kingdom: Submission to Intelligence Security Committee*, AI Index: EUR 45/0012/2014, accessible here: <https://www.amnesty.org/en/documents/eur45/0012/2014/en/> (A full copy of this submission will be provided to the Committee in advance of its session).

for serious violations of their human rights.²⁹ The case is currently pending before the UK Supreme Court after it permitted an appeal by the defendants based on the “act of state” doctrine and the principle of “state immunity”.

EXPANSION OF CLOSED MATERIAL PROCEDURES TO CIVIL CLAIMS FOR DAMAGES, INCLUDING THOSE RESULTING FROM TORTURE AND OTHER ILL-TREATMENT – ART 2, 7 & 14

A number of provisions in the Justice and Security Act 2013³⁰ undermine the right to an effective remedy and limit, on national security grounds, the ability of victims of human rights violations to seek disclosure of material pertaining to those violations in domestic courts. This legislation was introduced as a direct response to the civil claims described above, brought by a number of individuals who have alleged UK involvement in their torture and other ill treatment, rendition and unlawful detention.

Previously, the use of closed material procedures was already applied to a wide range of proceedings, including national-security related deportation, asylum or deprivation of citizenship cases before the Special Immigration Appeals Commission (SIAC), High Court proceedings relating to administrative controls imposed on individuals suspected of involvement in terrorism-related activity (see separate section below), and employment tribunal proceedings involving national security concerns. The Justice and Security Act 2013 has further extended their use throughout the ordinary civil justice system, to cases which the government claims give rise to national security concerns.

Closed material - essentially a form of secret evidence - is information which the government claims would be damaging to national security if it were to be disclosed. A closed material procedure allows a court or tribunal to consider such material during a secret hearing, from which one party to the litigation and their lawyer is excluded. The party's interests are instead

²⁹ *Abdul-Hakim Belhaj and Fatima Boudchar v Straw and Ors*, [2014] EWCA Civ 1394, 30 October 2014 para. 119, <https://www.judiciary.gov.uk/wp-content/uploads/2014/10/belhaj-v-jack-straw.pdf>

³⁰ Justice and Security Act 2013, available at: http://www.legislation.gov.uk/ukpga/2013/18/pdfs/ukpga_20130018_en.pdf.

represented by a Special Advocate who is not permitted to communicate with the individual concerned (except in very exceptional circumstances) once the advocate has reviewed the closed material. This material is withheld throughout the proceedings and in some cases may never be disclosed to the individual(s) whose interests are at stake, her/his lawyer of choice, and the public, none of whom has access to the closed hearing. Where a closed material procedure applies in a case, the court may also issue a closed judgment alongside an open one – the secret judgment is never given to the individual or her/his lawyer and remains entirely hidden from public view.

Amnesty International has long criticized the use of closed material procedures in the UK, as they undermine basic standards of fairness and open justice.³¹ Lawyers who have spoken with Amnesty International have made it clear that they face profound difficulties in representing their clients effectively where a closed material procedure applies, raising serious questions about how such procedures can achieve any meaningful equality of arms between the parties. Special Advocates – who sit at the heart of this secret justice system – have also publicly stated that closed material procedures “are inherently unfair; they do not ‘work effectively’, nor do they deliver real procedural fairness.”³²

Amnesty International is deeply concerned that by allowing the government to rely on secret evidence during a civil claim for damages, the Justice and Security Act fundamentally undermines the right of victims of human rights violations such as torture and other ill-treatment to have access to a fair and effective procedure for establishing their claims and obtaining an effective remedy. The reliance on secret evidence also allows the government to avoid scrutiny and criticism of its human rights record. In short, neither the concealment of evidence of human rights violations on purported grounds of national security, or reliance by the government on secret evidence of any kind, has any legitimate place in proceedings in which a remedy for such violations is sought.

Whilst in principle there may be reasonable justifications for not disclosing all information in legal proceedings, for example, where such disclosure would endanger the lives or safety of identifiable individuals, this cannot justify the provision of a blanket claim to secrecy for the intelligence agencies, as the Act provides. All measures used to restrict fair trial guarantees based on national security grounds must be fully compliant with other obligations under the Covenant. Intelligence material, as with other types of sensitive material, must be subject to possible disclosure if a court determines that it contains evidence of human rights violations such as secret detention, torture or other ill-treatment.

ACCOUNTABILITY FOR TORTURE AND OTHER ILL-TREATMENT AND

³¹ For further information see *Left in the Dark: The use of secret evidence in the United Kingdom*, AI Index: EUR 45/014/2012, October 2012 (A full copy of this report will be provided to the Committee in advance of its session).

³² Special Advocates submission to the Justice and Security Green Paper, January 2012.

UNLAWFUL KILLINGS BY UK ARMED FORCES IN IRAQ, AND EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS PROTECTIONS – ART 2, 6 & 7

British armed forces have been found responsible (notably by the Baha Mousa Inquiry³³) for torture and other ill-treatment of detainees in some instances, and other allegations persist of violations of international human rights and international humanitarian law during their six year presence in Iraq, from March 2003 to May 2009, when they were largely based in and around the southern city of Basra.³⁴³⁵ To date, however, only one low-ranking soldier is known to have been convicted by the UK authorities for inhuman treatment of detainees.³⁶ The UK government still faces hundreds of legal claims by Iraqis who allege that they were subject to abuses by British troops and has reportedly paid out millions of pounds to settle claims made by Iraqi complainants, although often without admitting liability.³⁷ Allegations also persist about UK Special Forces personnel handing over detainees to US custody at Camp Nama notwithstanding having witnessed or otherwise being personally aware of torture and ill-treatment there in 2003 and 2004.³⁸

Amnesty International considers the many claims of torture, other ill-treatment and unlawful killing that Iraqis have made against the British military to be sufficiently numerous and credible to warrant the establishment of a single, independent, public inquiry by the UK government.³⁹ Such an inquiry should be tasked to investigate the alleged violations, assess

³³ The three full volumes of the Baha Mousa Inquiry report can be accessed here: <http://webarchive.nationalarchives.gov.uk/20120215203912/http://www.bahamousainquiry.org/report/index.htm>; for Amnesty International's response to the publication of the Inquiry report, see *United Kingdom: Justice must follow as Baha Mousa Inquiry makes damning findings against UK armed forces*, AI Index EUR 45/016/2011, 9 September 2011.

³⁴ The UK was recognized as an occupying power in Iraq from May 2003 until June 2004, but UK combat troops remained in the country with the agreement of the new Iraqi authorities until May 2009.

³⁵ These mounting allegations are all the more relevant to the Committee's examination in light of CCPR/C/GBR/CO/6, para. 14

³⁶ At least four other members of the UK armed forces were court-martialed and convicted of offences in connection with the so-called Breadbasket incident of May 2003 involving mistreatment and photographs of Iraqi looters. See: <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GBR.5.doc>

³⁷ Ian Cobain, "MoD pays out millions to Iraqi torture victims," *The Guardian*, 20 December 2012, <http://www.guardian.co.uk/law/2012/dec/20/mod-iraqi-torture-victims> and Rosa Silverman, "MoD pays out £14m in compensation to Iraqis over torture claims," *The Telegraph*, 21 December 2012, <http://www.telegraph.co.uk/news/uknews/defence/9759919/MoD-pays-out-14m-compensation-to-Iraqis-over-torture-claims.html>

³⁸ Ian Cobain, "Camp Nama: British personnel reveal horrors of secret US base in Baghdad", *The Guardian*, 1 April 2013, <http://www.guardian.co.uk/world/2013/apr/01/camp-nama-iraq-human-rights-abuses>

³⁹ For further detail in the specific inquiries, please refer to *Iraq: A decade of abuses*, MDE 14/001/2013, 11 March 2013, <http://www.amnesty.org/en/library/info/MDE14/001/2013/en>, Section 6.3 on the United Kingdom.

the degree to which they were systemic, apportion responsibility at all relevant levels and ensure accountability, including through criminal prosecutions. It should allow for meaningful victim participation and recommend measures, including reparations, to provide effective redress to victims and to prevent future repetition of such violations.

To date, however, the UK authorities have responded in an incremental and individualized manner to attempts to secure accountability for alleged human rights violations by British forces in Iraq. This has been largely through settling civil claims (without admitting liability) made by individual victims, their families and legal representatives and responses to requests made under the Freedom of Information Act.

Amnesty International is concerned that the UK continues to take a narrow view of the extraterritorial application of its international convention obligations, thereby undermining human rights protection and obstructing efforts by victims to obtain an effective remedy for human rights violations.⁴⁰ For example, with respect to military operations overseas, the UK has emphasized that although its armed forces are required to comply with the absolute prohibition against torture as set out in the Covenant and other international and regional human rights instruments, it has denied that the broader obligations and protections under the Covenant, such as those in Article 7 to prevent acts of torture, apply extraterritorially.⁴¹

UPDATE: On 17 December 2014, the Al-Sweady inquiry published its report showing that British soldiers mistreated nine Iraqis after a battle near Majar al Kabir in 2004.⁴² However, it also came to the conclusion that the vast majority of allegations in this case made against the British army were without merit or justification. Amnesty International continues to believe, notwithstanding these findings, that a wider, independent and impartial investigation into the hundreds of claims of human rights violations that allegedly took place during UK presence in southern Iraq is still required.

⁴⁰ The UK has attempted to limit the extent to which the European Convention on Human Rights applies to the actions of its armed forces abroad, arguing strenuously in two cases heard by the European Court of Human Rights – namely *Al-Skeini (Al-Skeini and others v United Kingdom* [Grand Chamber], application no. 55721/07, 7 July 2011.) and *Al-Jedda (Al-Jedda v United Kingdom* [Grand Chamber], application no. 27021/08, 7 July 2011)- that protections of the Convention should not apply to UK forces in Iraq. These arguments were rejected by the Court, which in both cases found that the Convention applied to the actions of the UK forces in Iraq.

⁴¹ In the UK's report to the Committee Against Torture, received by that Committee on 6 September 2011, the UK explicitly stated that it "does not consider that the Convention Against Torture applies extra-territorially" (CAT/C/GBR/5, page 27 para. 119). The UK also recently rejected a recommendation by Nicaragua during the UPR process that the UK "Recognize the extra-territorial application of the CAT, according to its jurisprudence", on the grounds that "The Committee Against Torture is not a judicial body and consequently neither its Reports or General Comments have the status of jurisprudence." And that "the UK takes an Article by Article approach to the Convention Against Torture, given that there is no single jurisdictional provision". (See "The UK's Universal Periodic Review – Annex document - September 2012" UN Doc A/HRC/21/9 Add.1)

⁴²The inquiry was formally established in December 2009 to investigate allegations of unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and the ill-treatment of five Iraqi nationals detained at Camp Abu Naji and subsequently at the divisional temporary detention facility at Shaibah Logistics Base between 14 May and 23 September 2004. Full report of the Al-sweady inquiry accessible here: <http://webarchive.nationalarchives.gov.uk/2015011514702/http://www.alsweadyinquiry.org/>

COUNTER-TERRORISM POWERS AND LEGISLATION

TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2012 – ART 9 & 14

The administrative restrictions under the Prevention of Terrorism Act 2005 (PTA), known as ‘control orders’, were replaced in 2012 by similar restrictions set out in the Terrorism Prevention and Investigation Measures Act (TPIM Act)⁴³. This Act provides for a new regime of administratively-ordered restrictions (TPIMs) to be placed on individuals suspected of involvement in terrorism-related activities. Although slightly less stringent than those applied under the PTA control orders regime and subject to a maximum two-year limit, restrictions imposed under TPIMs could still amount to a deprivation of liberty or constitute restrictions on the rights to privacy, association, expression and movement.

In its concluding observations in 2008, the Committee expressed concern about the control order regime and its conformity with Articles 9 and 14 of the Covenant. The Committee emphasised the adverse impact that the use of closed material proceedings has on the equality of arms of the parties to a case in proceedings where the imposition of control orders may be challenged.⁴⁴ The imposition of TPIMs continues to be possible through judicial proceedings which are based on closed material procedures. The TPIM Act also provides for an ‘enhanced’ version of TPIMs, which could be introduced in the future, in exceptional circumstances which have not been adequately defined. In these cases, the most severe restrictions that were previously available under the PTA control orders regime may still be imposed.

The deficiencies of the PTA control order regime with respect to equality of arms remain inherent in the TPIM regime.

UPDATE: On 12 February 2015, the Counter-Terrorism and Security Act received Royal Assent.⁴⁵ The Act amended the TPIM Act by re-introducing several of the more stringent administrative restrictions found under the previous control-order regime, including the forced relocation of individuals subject to a TPIM. In addition, the threshold by which a TPIM can be imposed by the Secretary of State has also been lowered, from “a reasonable belief” to a “balance of probabilities”⁴⁶

DETENTION OF PEOPLE SUSPECTED OF TERRORISM-RELATED ACTIVITY – ART 9 & 14

⁴³ Terrorism Prevention and Investigation Measures Act 2011, <http://www.legislation.gov.uk/ukpga/2011/23/contents/enacted>

⁴⁴ Human Rights Committee, Concluding Observations on the UK, CCPR/C/GBR/CO/6, July 2008, para. 17

⁴⁵ The full act can be found here: <http://www.legislation.gov.uk/ukpga/2015/6/notes/contents>

⁴⁶ See Part 2 Terrorism Prevention and Investigation Measures, Section 20 miscellaneous amendments.

In 2008, the Committee called on the State to “ensure that any terrorist suspect arrested [...] be promptly informed of any charge against him or her and tried within a reasonable time or released.”⁴⁷ In January 2011, the maximum period of pre-charge detention in terrorism cases was reduced from 28 to 14 days following a review of counter-terrorism and security powers by the Home Office. The Protection of Freedoms Act,⁴⁸ which came into force in May 2012, not only retains the 14-day limit, but it also allows the maximum period to be raised back to 28 days in response to an unspecified “urgent” situation that could arise in the future.⁴⁹ Such undefined situations of “urgency” undermine notions of legal certainty and give the government wide power to define an urgent situation as it sees fit.

CONTINUING RELIANCE ON DIPLOMATIC ASSURANCES TO DEPORT FOREIGN NATIONALS – ART 7

The UK has sought and continues to seek diplomatic assurances from foreign governments in its attempts to deport a number of individuals, alleged to pose a threat to the UK’s national security, to states where they could not be deported because of the real risk of torture and other ill-treatment they would face upon return. To date the UK has concluded ‘memorandums of understanding’ (MoUs) with the governments of Lebanon, Jordan, Libya,⁵⁰ Ethiopia and Morocco. After the UK tried and failed to secure a MoU with the Algerian authorities, the UK and Algerian government agreed to negotiate bilateral assurances for humane treatment and fair trial on a case-by-case basis.

The use of diplomatic assurances for deportations of foreign nationals on grounds of national security does not provide an effective safeguard against torture and other ill-treatment. Our research and analysis have demonstrated that such assurances are inherently unreliable and legally unenforceable.⁵¹ As a result they put individuals who are deported on this basis at risk of abuse with no remedy. No system of post-return monitoring of individuals will render assurances an acceptable alternative to rigorous respect for the absolute prohibition of transfers to risk of torture or other ill-treatment.⁵²

The absolute prohibition on deporting, extraditing or otherwise transferring any person to a country where he or she will face a real risk of being subjected to torture or other ill-treatment incorporates the obligation to provide individuals with access to a fair and effective procedure. Such a procedure must originate with or include judicial review, so that the individual concerned can raise a claim of such risks and have it adjudicated. Reliance on

⁴⁷ Human Rights Committee, Concluding Observations on the UK, CCPR/C/GBR/CO/6, July 2008, para. 15

⁴⁸ Protection of Freedoms Act 2012, Part 4, <http://www.legislation.gov.uk/ukpga/2012/9/part/4/enacted>

⁴⁹ Protection of Freedoms Act, part 58

⁵⁰ In April 2007 the Court of Appeal of England and Wales upheld a prior decision of the SIAC allowing the appeals of two Libyan nationals against their deportations on the grounds that the assurances from the Libyan government were not sufficient to protect the men from a real risk of torture or other ill-treatment. See DD and AS v Secretary of State for the Home Department, [2008] EWCA Civ. 289, 9 April 2008.

⁵¹ See in particular *Dangerous Deals: Europe's reliance on 'diplomatic assurances' against torture*, AI Index: EUR 01/012/2010, 12 April 2010, <http://www.amnesty.org/en/library/info/EUR01/012/2010>.

⁵² The Committee against Torture has previously expressed concern about the use of diplomatic assurances and has recommended that a ‘State party refuse to accept diplomatic assurances in relation to extraditions of persons from its territory to States where those persons would be in danger of being subjected to torture since those assurances cannot be an instrument to modify a determination of a possible violation of article 3 of the Convention.’ (CAT/C/CZE/CO/4-5)

secret material in appeal proceedings against orders for deportation on “national security” grounds, which take place before the Special Immigration Appeals Commission (SIAC), renders the process profoundly unfair.

SIAC permits the government to rely on secret evidence, including intelligence material, to support its argument that the assurances will be effective and the individual concerned would not be at risk on return. Such material can include further detail regarding the government’s assessment about conditions prevailing in the country in question or can relate to the personal circumstances of the individual concerned which may affect risk on return. The use of secret information, considered in secret sessions of the court from which the appellants and their legal representatives have been excluded, is particularly concerning when individuals are deported in the context of a risk of torture or other ill-treatment on return. The use of such evidence in the safety on return aspect of national security deportation cases essentially ties the hands of the person subject to deportation; an individual cannot challenge effectively the government’s claim that there is no risk because that person cannot review all the relevant evidence.⁵³

Amnesty International maintains its call to the UK government to halt the use of diplomatic assurances in cases where they are used to justify the transfer of an individual to a place where he or she would be at risk of human rights violations such as torture and other ill-treatment on return. Moreover, the SIAC should not permit the government to submit information in secret on the risk of return, but should allow the person subject to deportation on national security grounds to review -- and thus effectively challenge -- relevant information related to his or her risk of human rights violations such as torture and other ill-treatment on return.

THE ALGERIAN CASES

UPDATE: In January 2015, the Court of Appeal of England and Wales delivered judgment in an appeal brought by six Algerian men against a January 2013 decision to permit their deportation from the UK to Algeria on national security grounds with diplomatic assurances from the Algerian authorities.⁵⁴ The men have been subject to deportation decisions for over 10 years, and have all – at various times – been subjected to high security detention and highly restrictive immigration bail conditions. The Court of Appeal held that the SIAC had erred in law in dismissing the men’s appeals against deportation, but remitted the decision back to the SIAC to be re-heard. The Court of Appeal ruled that it was “now common ground that the conditions in which the appellants would be held at Antar barracks [in *garde à vue* custody of the Department for Information and Security, the Algerian intelligence service] are known to be deplorable”.⁵⁵ The remitted SIAC hearing is scheduled for July 2015.

THE COUNTER-TERRORISM AND SECURITY ACT – ART 12 & 15

⁵³ See Amnesty International’s report: *Left in the Dark: The use of secret evidence in the United Kingdom*, AI Index: EUR 45/014/2012, October 2012.

⁵⁴ BB, PP, W, U & Ors v Secretary of State for the Home Department [2015] EWCA Civ 9 (23 January 2015) URL: <http://www.bailii.org/ew/cases/EWCA/Civ/2015/9.html>

⁵⁵ BB, PP, W, U & Ors v Secretary of State for the Home Department [2015] EWCA Civ 9 (23 January 2015), para 42.

UPDATE: The Counter-Terrorism and Security Act approved in February 2015 introduced further broad and sweeping counter-terrorism and security powers that are not in line with the international human rights obligations of the UK. Of particular concern to Amnesty International is the introduction of “Temporary Exclusion Orders” (TEO), which prevents a British citizen, or others with a right to live in the UK, from returning to the UK unless their return is either in accordance with a “permit to return” or they are deported to the UK by the state they are in.⁵⁶ A TEO is an administrative, executive order that can be imposed if the Secretary of State reasonably suspects that the individual in question is, or has been involved in terrorism-related activity, and reasonably considers that it is necessary to impose to protect people in the UK from a risk of terrorism.

The imposition of a TEO has the effect of invalidating the subject’s British passport (with no option for re-issue). The TEO lasts for two years, and is allowed to be renewed for so long as the conditions remain satisfied. The individual can apply to the Secretary of State for a ‘permit to return’ to allow them to re-enter the UK. The permit states when, where and how the person is permitted to return, but it may also be subject to special conditions set by the Secretary of State, such as compulsory reporting and interviews. Return to the UK in contravention of those restrictions without reasonable excuse is a criminal offence with up to five years in prison. There is limited judicial oversight of the process, apart from the possibility of ex-post facto judicial review which would have to be pursued from abroad.

In practice, a TEO does more than manage and control the return of individuals to the UK, but rather temporarily excludes those who have a right to live in the UK from their home, in contravention of the ICCPR.⁵⁷ Furthermore, Amnesty International believes TEOs are neither necessary nor proportionate.

Amnesty International also wishes to draw the Committee’s attention to the broad definition of “terrorism” relied upon by the UK, common across the UK’s counter-terrorism legislation.⁵⁸ Amnesty International considers that the definition of “terrorism” itself, as well as particular offences such as “encouraging support” or simple possession of information (or anything else) “of a kind likely to be useful to a person committing or preparing an act of terrorism” without any requirement that the person actually intend to so use it, are so broad and vague that they infringe the principle of legal certainty, violating article 15 of the Convention.

Amnesty International also notes the inclusion of a proposed “Extremism Bill” in the Queen’s Speech that will introduce further counter-terrorism powers to tackle extremism in the UK, including: Banning Orders, a new power for the Home Secretary to ban extremist groups,

⁵⁶ See Part 1, chapter 2 of the Counter-Terrorism and Security Act.

⁵⁷ In evidence to the Joint Committee of Human Rights the Minister for Immigration and Security at the Home Office confirmed the provisions in the Bill still have the effect of invalidating a UK national’s passport while they are abroad, and of preventing their return unless they comply with conditions imposed by the Secretary of State. See the Joint Committee of Human Rights report, *Legislative Scrutiny: the Counter-terrorism and Security Bill*, HL paper 86/HC 859, 7 January 2015, p. 15, accessible here: <http://www.publications.parliament.uk/pa/jt201415/jtselect/htrights/86/86.pdf>

⁵⁸ The definition of ‘terrorism’ in the Counter-Terrorism and Security Act is the same found in the Terrorism Act 2000 (see Section 1(1) to (4) of the Act). Amnesty International has expressed concern about the definition of “terrorism” in the Terrorism Act 2000 since that Act was first introduced in Parliament; see, for instance, UK: Briefing on the Terrorism Bill, AI Index: EUR 45/043/2000, published in April 2000 and UK: Human rights: a broken promise, AI Index: EUR 45/004/2006, 23 February 2006, section 2.3. The definition is replicated in other legislation, including TPIMs Act. The UN Human Rights Committee has also expressed concern: UN Doc CCPR/C/GBR/CO/6, 30 July 2008, para 26

Extremism Disruption Orders, powers for law enforcement to stop individuals engaging in extremist behaviour and Closure Orders, a new power for law enforcement and local authorities to close down premises used to support extremism. Absent the draft Bill, Amnesty International cannot comment on the proposals concretely. However, the organization is concerned that the Bill aims to introduce even further reaching counter-terrorism powers that may not be in line with the UK's human rights obligations.

SURVEILLANCE AND INTERCEPTION OF COMMUNICATIONS – ART 17 & 19

In June 2013, disclosures made by a former NSA contractor, Edward Snowden, about the nature and extent of surveillance activities by the UK intelligence agency Government Communication Headquarters (GCHQ) and its US counterpart the National Security Agency (NSA), raised serious concerns regarding those states' respect for the right to privacy, and other human rights, notably the rights to freedom of expression.⁵⁹ The revelations largely related to three secret surveillance programmes: PRISM (run by the US government's NSA to obtain internet communications from US internet providers); UPSTREAM (direct interception by the NSA as communications passed through the US); and Tempora (direct interception by the GCHQ as communications pass out of or into the UK).⁶⁰ The revelations included that the UK government receives information from the US that is obtained through PRISM and UPSTREAM.

The Regulation of Investigatory Powers Act (RIPA) 2000, the primary piece of legislation governing surveillance by public authorities in the UK, does not provide sufficient safeguards to ensure that such surveillance is authorized and carried out in conformity with the right to privacy and in a way that protects the right to freedom of expression. It has also proven itself to be woefully outdated in light of technological advances.

There is an absence of adequate legislative controls or safeguards in UK law for the receipt, analysis, use and storage of data received from foreign intelligence agencies that have been obtained by interception. As recently noted by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, there is a lack of adequate judicial oversight and scrutiny of surveillance activities in the UK.⁶¹ In addition to this, the jurisdiction of the Investigatory Powers Tribunal (IPT) is restricted to determining complaints referred to them by members of the public. Since the granting of external communications warrants are not disclosed, individuals are not in a position to challenge them before this tribunal. Finally, the UK legislative framework as it stands allows for the possibility of

⁵⁹ In December 2013, Amnesty International submitted a legal complaint to the UK's Investigatory Powers Tribunal challenging the mass interception of/ interference with communications by the UK intelligence and security agencies. The complaint argues that the activities of the UK agencies are in breach of the UK government's human rights obligations, principally the rights to private and family life and freedom of expression.

⁶⁰ For further detail see, amongst others, "NSA Prism program taps in to user data of Apple, Google and others", Glenn Greenwald and Ewen MacAskill, The Guardian, 7 June 2013; "GCHQ taps fibre-optic cables for secret access to world's communications", The Guardian, 21st June 2013; "UK gathering intelligence via covert NSA operation", Nick Hopkins, The Guardian, 7 June 2013. See also the Joint Application by Big Brother Watch and others to the European Court of Human Rights, accessible at:

https://www.privacynotprism.org.uk/assets/files/privacynotprism/496577_app_No_58170-13_BBW_ORG_EP_CK_v_UK_Grounds.pdf.

⁶¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 17 April 2013, UN Doc: A/HRC/23/40, § 54

executive interference with the Intelligence and Security Committee, the parliamentary oversight body.⁶²

Partly in response to a decision by the European Court of Justice,⁶³ the government introduced in July 2014 a new Data Retention and Investigatory Powers (DRIP) Act as a piece of fast-tracked emergency legislation.⁶⁴ Besides concerns about the rushed nature of the legislative process used to pass this legislation, which precluded proper consultation and Parliamentary scrutiny, the Act, among other measures, dramatically extends the reach of UK's interception powers under RIPA by providing potentially wide-ranging extraterritorial effects to UK interception warrants.

A new Investigatory Powers Bill, announced in the Queen's Speech on 27 May, appears to be intended to carry out a wholesale reform of the laws in the area of surveillance and data retention. Amnesty International notes the commitment of the government to "modernise our law in these areas and ensure it is fit for purpose",⁶⁵ but remains concerned about the apparent desire to increase rather than properly limit and target surveillance and data retention. Government declarations have referenced the desire to enable the "continuation" of targeting terrorist communications "and other capabilities", suggesting this new Bill would increase the powers of intelligence agencies at the possible expense of human rights protection.

On 6 February 2015 the IPT ruled (in a case brought by Amnesty International, Privacy International and eight other human rights organisations) that the UK government's procedures' for "soliciting, receiving, storing and transmitting by UK authorities of private communications of individuals located in the UK, which have been obtained by US authorities" pursuant to PRISM and Upstream, violated international human rights standards. However, the IPT said that US-UK intelligence-sharing related to communications surveillance is now lawful due to government disclosures made during the case regarding the safeguards in place when obtaining information from the US authorities. Amnesty International strongly disagrees with this finding and has, alongside other NGOs, lodged a case with the European Court of Human Rights.

Amnesty International therefore calls for urgent reform to the laws governing surveillance, to

⁶² For further discussion of these issues, see, for example, *Amnesty International UK response to the Justice and Security Green Paper*, January 2013.

⁶³ Digital Rights Ireland Ltd (C-293/12) v Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, Commissioner of the Garda Síochána, Ireland, and The Attorney General, 8 April 2014, <http://curia.europa.eu/juris/document/document.jsf?docid=150642&doclang=EN>

⁶⁴ The full text of the Data Retention and Investigatory Powers Act 2014 and related legislative documents can be accessed here: <http://services.parliament.uk/bills/2014-15/dataretentionandinvestigatorypowers/documents.html>. As regards the extraterritorial application of the ICCPR in relation to digital surveillance, see Amnesty International and the American Civil Liberties Union's joint submission to US Privacy and Civil Liberties Oversight Board (March 19, 2014, <http://www.amnestyusa.org/sites/default/files/recommendationsforhumanrightslawandussurveillancepractices.pdf>) and Amnesty International's submission to OHCHR (General Assembly Resolution 68/167: Submission to Office of the High Commissioner for Human Rights on Surveillance and the Extraterritorial Application of Human Rights, A/68/2014/Add.1, April 2014, <http://www.amnesty.org/en/library/info/ACT30/003/2014/en>), as well as the Report of the Office of the United Nations High Commissioner for Human Rights, "The right to privacy in the digital age," paras 31 to 36 http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf.

⁶⁵ See Queen's speech 2015: background briefing notes p. 64, accessible here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430149/QS_lobby_pack_FINAL_NEW_2.pdf

ensure that any interference with the right to privacy comply with the human rights principles of legality, necessity and proportionality, are properly authorized, and are subject to adequate judicial and parliamentary scrutiny.⁶⁶

CRIMINALIZATION OF ABORTION AND LACK OF ACCESS TO SAFE ABORTION IN NORTHERN IRELAND – ART 2, 3, 6, 7

Northern Ireland imposes the harshest criminal penalty in abortion regulation across Europe. This Committee and various other UN treaty bodies have consistently called on state parties to amend legislation criminalizing abortion in order to withdraw punitive measures imposed on women who undergo abortion and to liberalize restrictive criminal regulation laws and to ensure access to lawful abortion.⁶⁷ In contravention of international standards, Northern Ireland's law continues to deny abortion in cases to protect the health of the pregnant woman, and in cases of rape and incest in fatal foetal impairment.⁶⁸ The Northern Ireland Department of Justice is, however, about to embark on a process of legislative consultation for access to abortion in cases of rape and fatal foetal impairment.

⁶⁶ See Amnesty International, *Submission to the ISC privacy and security inquiry*, AI Index: EUR 45/002/2014, 7 February 2014, (not currently online, a copy can be provided to the Committee if required).

⁶⁷ CEDAW Gen. Rec. No. 24, para. 31(c). See also Concluding Observations of the CEDAW Committee: Andorra, para. 48, U.N. Doc. A/56/38 (2001); Concluding Observations of the CEDAW Committee: Belize, para. 57, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee: Burkina Faso, para. 276, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Cameroon, para. 60, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Ireland, para. 186, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee: Jordan, para. 181, U.N. Doc. A/55/38 (2000); Concluding Observations of the CEDAW Committee: Namibia, Part II para. 127, U.N. Doc. A/52/38/Rev.1 (1997); Concluding Observations of the CEDAW Committee: Nepal, paras. 139 and 148, U.N. Doc. A/54/38 (1999); Concluding Observations of the CEDAW Committee: United Kingdom, para. 310, U.N. Doc. A/55/38 (1999). See e.g., Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bolivia, para. 43, U.N. Doc. E/C.12/1/Add.60 (2001); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mauritius, para. 15, U.N. Doc. E/C.12/1994/8 (1994); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal, paras. 32 and 55, U.N. Doc. E/C.12/1/Add.66 (2001); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Poland, para. 29, U.N. Doc. E/C.12/1/Add.82 (2002); Concluding Observations of the Committee on Economic, Social and Cultural Rights: Senegal, paras. 26 and 47, U.N. Doc. E/C.12/1/Add.62 (2001). See Concluding Observations of the Human Rights Committee: Ecuador, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); Concluding Observations of the Human Rights Committee: Kenya, para. 14, U.N. Doc. CCPR/C/83/KEN (2005); Concluding Observations of the Human Rights Committee: Paraguay, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); Concluding Observations of the Human Rights Committee: Poland, para. 8, U.N. Doc. CCPR/C/82/POL (2004); Concluding Observations of the Human Rights Committee: Trinidad and Tobago, para. 18, U.N. Doc. CCPR/C/70/TTO (2000).

⁶⁸ Human Rights Committee, Communication No, 1153/2003, K.L. v Peru, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); Human Rights Committee, LMR v Argentina CCPR/C/70/ARG, para. 14.

UPDATE: In October 2014, the Department of Justice (DOJ) for Northern Ireland embarked on a process of legislative consultation on the possible decriminalization and legalization of abortion in cases of “lethal foetal abnormality and sexual crime.”⁶⁹ While this initiative is, in principle, a positive move towards removing criminal sanction for accessing reproductive health care, the underlying stigma around abortion and the lack of legal clarity on the circumstances in which abortion is permitted in Northern Ireland, continues to have a damaging impact on women and girls’ human rights. Women and girls in Northern Ireland who need to access abortion services, for the most part, have to travel to another jurisdiction. Healthcare providers providing abortion information or services in Northern Ireland face harassment.

In February 2015, Amnesty International published a detailed briefing setting out concerns about the abortion legislation in Northern Ireland.⁷⁰

The abortion regulation in Northern Ireland is underpinned by 19th century legislation, the Offences against the Person Act 1861, which predates all the relevant international human rights treaties by a century. The Abortion Act 1967 and subsequent legislative developments which regulate abortion in Great Britain do not extend to Northern Ireland. Responsibility for healthcare and criminal justice matters has been devolved, since 1999 and 2010 respectively, to regional authorities in Northern Ireland.

The law governing abortion in Northern Ireland is one of the most restrictive in Europe both in law and in practice; only Ireland and Malta are more restrictive.⁷¹ It also carries *the harshest criminal penalty in abortion regulation in Europe—life imprisonment for the woman undergoing the abortion and for anyone assisting her.* Abortions are only lawful in extremely restricted circumstances, namely where there is a risk to a woman’s or girl’s life or a real and serious long-term or permanent damage to the physical or mental health of the pregnant woman. Abortions procured for other reasons carry a risk and threat of life imprisonment, including abortions sought because the pregnancy is a result of a sexual crime, such as rape and incest, and in cases of fatal foetal impairment. Although that criminal sanction is not applied in practice, the risk and threat of possible severe criminal sanction continue to exert a chilling effect on women and healthcare providers alike. This Committee has described criminal regulation as exerting a deterrent or “chilling” effect, and suggested that such criminal laws may violate the right to life. State failure to positively ensure effective access to lawful abortion and post-abortion care is also interpreted as a violation of women’s rights to life and health.⁷².

⁶⁹ Department of Justice NI, “The Criminal Law on Abortion: Lethal foetal abnormality and sexual crime: A consultation on amending the law by the Department of Justice,” October 2014, <http://www.dojni.gov.uk/consultation-on-abortion-2014>

⁷⁰ Amnesty International, *Northern Ireland: Barriers to Accessing Abortion Services*, AI Index: EUR 45/1057/2015), <http://amnesty.org/en/documents/eur45/1057/2015/en/> (A full copy of this report will be provided to the Committee in advance of its session). The situation in Northern Ireland is distinct from that in the jurisdiction of Ireland, which is the subject of a separate Amnesty International report, *She is not a criminal: The impact of Ireland’s abortion law*, AI Index: EUR 29/1597/2015 (forthcoming), although women from both jurisdictions reported similar experiences of having travelled to Great Britain to access abortion services.

⁷¹ This statement takes account of the situation not just in the 28 European Union member states, but in all 47 Council of Europe member states.

⁷² Concluding Observations of the Human Rights Committee: Argentina, para. 14, U.N. Doc. CCPR/C/70/ARG (2000). See also Concluding Observations of the Human Rights Committee: Venezuela, para. 19, CCPR/C/71/VEN (2001); Concluding Observations of the Human Rights Committee: Guatemala, para. 19, U.N. Doc. CCPR/C/72/GTM (2001); Concluding Observations of the Human

In practice, the law is even more restrictive. For many women, demonstrating a long-term risk to health, particularly mental health, and overcoming barriers to access to abortion in Northern Ireland is often an insurmountable challenge. Women's access to and experience with health services also varies depending on the attitude of and availability of services within each of Northern Ireland's National Health Service (NHS) health trusts (i.e. the regional administrative units of the UK public health system), which leads to further inequity. Abortion remains an issue that continues to face significant social stigma. Legal abortions are infrequently carried out in Northern Ireland because of the extremely limited legal circumstances in which women are entitled to abortions: official statistics indicate that 23 lawful terminations took place in Northern Ireland in 2013/14. Most women and girls living in Northern Ireland who need to access abortion services have to take a plane or ferry to access such care in another jurisdiction; the majority travel to Great Britain, with some also travelling to other European countries, including the Netherlands and Belgium. Women and girls attending clinics and centres that provide reproductive health care and advice are regularly intimidated by anti-choice activists outside the clinics and nearby pavements. Service providers and others who work in the area of sexual and reproductive health, including family planning, and abortion, are regularly harassed publicly.

Medical providers, NGOs, civil society organizations, academics and others interviewed by Amnesty International reported a hostile environment for healthcare providers seeking to ensure women and girls' access to abortion services. Many interviewees also voiced concerns about a "postcode lottery" resulting in uneven care and access to abortion advice across the various NHS health trusts in Northern Ireland.

Termination of pregnancy guidance remains unpublished by the Department of Health, Social Services and Public Safety (DHSSPS), creating significant uncertainty for medical professionals, service providers and the women and girls in their care. This lack of clarity on the law is further compounded by the threat of criminal and professional sanction.

A common theme in the interviews conducted by Amnesty International was the "silence" in Northern Ireland around the issue of abortion; interviewees likened it to a wall, a conspiracy, or a stifling presence. Women and girls in Northern Ireland who have had to consider and go through abortions rarely speak privately to family, friends or their healthcare providers, let alone publicly, about their decision, often referring to the pervasive stigma and the fear of punishment as their reasons for not doing so.

Amnesty International calls on the authorities in Northern Ireland to ensure access to lawful abortion in line with international human rights standards, to remove the threat of criminal sanctions from women who undergo abortion and healthcare professionals who provide termination advice and services, and to ensure the publication of clear guidelines on the termination of pregnancy which is in line with international human rights standards and best

Rights Committee: Mauritius, para. 9, U.N. Doc. CCPR/CO/83/MUS (2005); Concluding Observations of the Human Rights Committee: Guatemala, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001); Concluding Observations of the Human Rights Committee: Kuwait, para. 16, U.N. Doc. CCPR/CO/69/KWT, A/55/40 (2000); Concluding Observations of the Human Rights Committee: Lesotho, para. 11, U.N. Doc. CCPR/C/79/Add.106 (1999); Concluding Observations of the Human Rights Committee: Trinidad and Tobago, para. 18, U.N. Doc. CCPR/CO/70/TTO (2000); Concluding Observations of the Human Rights Committee: United Republic of Tanzania, para. 15, CCPR/C/79/Add.97 (1998).

practices for the provision of reproductive and sexual health care. Amnesty International also calls on UK authorities to ensure that access to sexual and reproductive health care by devolved authorities in Northern Ireland is delivered in compliance with the UK's international human rights obligations.

APPENDIX

For further information please see the following Amnesty International documents:

On accountability for deaths, torture and serious injuries in Northern Ireland

- Northern Ireland: Those who condoned or authorized use of torture must be held accountable, Press Release, 5 June 2014, <http://www.amnesty.org/en/for-media/press-releases/northern-ireland-those-who-condoned-or-authorized-use-torture-must-be-held>
- Amnesty International statement to joint committee briefing and hearing: "The Northern Ireland peace process today: attempting to deal with the past", AI Index: EUR 45/007/2014, 11 March 2014, <http://www.amnesty.org/en/library/info/EUR45/007/2014/en>
- Amnesty International statement to the Oireachtas joint committee on the implementation of the Good Friday Agreement : Time to deal with the past in Northern Ireland, EUR 45/006/2014, 5 March 2014, <http://www.amnesty.org/en/library/info/EUR45/006/2014/en>
- United Kingdom/Northern Ireland: Administrative scheme for "on the runs" must not perpetuate impunity, AI Index: EUR 45/004/2014, 28 February 2014, <http://www.amnesty.org/en/library/info/EUR45/004/2014/en>
- United Kingdom/Northern Ireland: Still no public inquiry twenty-five years after the killing of Patrick Finucane, AI Index: EUR 45/003/2014, 12 February 2014, <http://www.amnesty.org/en/library/info/EUR45/003/2014/en>
- United Kingdom/Northern Ireland: Haass proposals on dealing with the past, AI Index: EUR 45/001/2014, 5 February 2014, <http://www.amnesty.org/en/library/info/EUR45/001/2014/en>
- Northern Ireland: Time to deal with the past, AI Index: EUR 45/004/2013, 12 September 2013, <http://www.amnesty.org/en/library/info/EUR45/004/2013/en>
- United Kingdom/Northern Ireland: A new step by the High Court in the case of Patrick Finucane, Press Release, AI Index: PRE01/017/2012, 13 January 2012, <http://www.amnesty.org/en/for-media/press-releases/united-kingdomnorthern-ireland-new-step-high-court-case-patrick-finucane-20>
- United Kingdom/Northern Ireland: Deplorable government decision to renege on promise of public inquiry into Finucane killing, AI Index: EUR 45/017/2011, 13 October 2011, <http://www.amnesty.org/en/library/info/EUR45/017/2011/en>
- United Kingdom/Northern Ireland: Inquiry into the killing of human rights defender and lawyer Rosemary Nelson finds serious omissions by state agencies, AI Index: EUR 45/006/2011, 24 May 2011, <http://www.amnesty.org/en/library/info/EUR45/006/2011/en>

On the use of UK territory for rendition flights and involvement of UK authorities in torture and other ill-treatment of people detained overseas in the context of counter-terrorism operations

- Europe: Breaking the conspiracy of silence: USA's European 'partners in crime' must act of Senate torture report, AI Index: EUR 01/002/2015, 20 January 2015,
<https://www.amnesty.org/en/documents/eur01/002/2015/en/>
- United Kingdom: Submission to the Intelligence Service Committee, AI Index: EUR 45/011/2014, 30 October 2014,
<https://www.amnesty.org/en/documents/eur45/011/2014/en/>
- Submissions of the International Commission of Jurists, Justice, Amnesty International and Redress in the case of *Belhaj & Anor v Straw & Ors*, available here:
<http://justice.org.uk/belhaj-anor-v-straw-ors/>
- United Kingdom: Joint NGO letter regarding the parliamentary Intelligence and Security Committee's examination of allegations of UK complicity in torture and other ill-treatment of detainees held overseas, AI Index EUR 45/005/2014, 7 April 2014,
<http://amnesty.org/en/library/info/EUR45/005/2014/en>
- UK: Decision to hand torture inquiry to intelligence committee strongly criticised, Press Release PRE01/667/2013, 19 December 2013, <http://www.amnesty.org/en/for-media/press-releases/uk-decision-hand-torture-inquiry-intelligence-committee-strongly-criticised>
- Libyan rendition case shows it's time for UK to come clean, News Story, 18 April 2012,
<http://www.amnesty.org/en/news/libyan-rendition-case-shows-it-s-time-uk-come-clean-2012-04-18>
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- United Kingdom: Proposed torture inquiry must be independent, impartial and thorough, EUR 45/005/2010, 24 May 2010,
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- United Kingdom: Time for an inquiry into the UK's role in human rights violations overseas since 11 September 2001, EUR 45/001/2010, 23 March 2010,
<http://www.amnesty.org/en/library/info/EUR45/001/2010/en>

On the expansion of closed material procedures to civil claims for damages, including those resulting from torture and other ill-treatment

- United Kingdom: Left in the dark: The use of secret evidence in the United Kingdom, AI Index: EUR 45/014/2012, 15 October 2012,
<http://www.amnesty.org/en/library/info/EUR45/014/2012>
- United Kingdom: Submission to the Joint Committee on Human Rights: The Justice and Security Green Paper, AI Index: EUR 45/006/2012, January 2012,
<http://www.amnesty.org/en/library/info/EUR45/006/2012/en>
- United Kingdom: Court of Appeal rules that secret procedures violate fair trial rights in civil proceedings, AI Index: EUR 45/003/2010, 5 May 2010,
<http://amnesty.org/en/library/info/EUR45/003/2010/en>

On accountability for torture and other ill-treatment and unlawful killings by UK armed forces in Iraq, and extraterritorial application of human rights protections

- Iraq: A decade of abuses, MDE 14/001/2013, 11 March 2013,
<http://www.amnesty.org/en/library/info/MDE14/001/2013/en>, Section 6.3 on the United Kingdom
- United Kingdom: Justice must follow as Baha Mousa Inquiry makes damning findings against UK armed forces, AI Index EUR 45/016/2011, 9 September 2011,
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On the Terrorism Prevention and Investigative Measures Act, and antecedent legislative powers

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- UK: Abu Qatada still at risk of torture and unfair trial, AI Index: EUR 45/010/2012, 9 May 2012, www.amnesty.org/en/library/info/EUR45/010/2012/en
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On surveillance and interception of communications

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On access to abortion in Northern Ireland

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