UNITED NATIONS **A**

General Assembly

Distr.
GENERAL

A/HRC/WG.6/1/GBR/1
6 March 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Working Group on the Universal Periodic Review
First session
Geneva, 7-18 April 2008

NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(a) OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1*

United Kingdom of Great Britain and Northern Ireland

* The present document was not edited before being sent to the United Nations translation services.

UK NATIONAL REPORT

A: Methodology and Consultation process

1. The United Kingdom's national report for this review has been prepared in line with the guidance provided in the *Elements for a Roadmap* based on resolution 5/1 made on 18 June 2007 by the Human Rights Council, and on the *General Guidelines for the Preparation of information under the Universal Periodic Review* contained in Document *A/HRC/6/L.24*. The national report covers the metropolitan area of the United Kingdom of Great Britain and Northern Ireland (including the devolved administrations of Scotland. Wales and Northern Ireland), the United Kingdom's Crown Dependencies, and the United Kingdom's Overseas Territories.

2. All the major Departments of State in the United Kingdom, and the devolved administrations in Scotland, Wales and Northern Ireland, the UK Crown Dependencies and the UK Overseas Territories have been involved in the drafting of the report.

3. In the process of producing the report, the United Kingdom Government has formally consulted the two established national human rights institutions, a range of non-governmental organisations active in the promotion of human rights, and members of civil society expert in human rights. Consultation took place at an early stage of drafting, and again before the report was finalised.

B: Country Background

Government

4. The United Kingdom is a unitary State comprising England, Wales, Scotland and Northern Ireland. The United Kingdom Crown Dependencies and Overseas Territories are not part of the UK, but the UK is responsible for their external affairs (see paragraphs 6 to 9 below). England and Wales, Scotland and Northern Ireland have separate legal systems. However some Acts of Parliament (including the Human Rights Act 1998) apply throughout the United Kingdom.

5. Since May 1997, the Government has introduced substantial devolution of powers to Scotland, Wales, and Northern Ireland as part of its wider programme of constitutional reform. The people of Scotland, Wales and Northern Ireland now have separate democratically-elected legislatures of their own - the Scottish Parliament and the Welsh and Northern Ireland Assemblies - giving them a greater say in the management of their day-to-day affairs, though they maintain the close links that have existed for centuries within the United Kingdom. The Westminster Parliament continues to legislate on certain matters that affect the whole of the United Kingdom - such as foreign affairs, defence and macro-economic policy - responsibility for which has not been transferred to the devolved administrations.

Crown Dependencies

6. The UK Crown Dependencies (CDs) are the Bailiwicks of Jersey and Guernsey and the Isle of Man. The CDs are not part of the United Kingdom (UK), but are self-governing dependencies of the Crown. They have their own directly elected

legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The CDs are not represented in the UK parliament and UK legislation does not extend to them.

7. The UK Government is constitutionally responsible for the defence and international representation of the CDs, and for their good government. This means that in circumstances such as a grave breakdown or failure in the administration of justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the CDs.

Overseas Territories

8. The British Overseas Territories (OTs) comprise Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, British Antarctic Territory, the British Indian Ocean Territory, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, the Pitcairn Islands, St Helena and its dependencies (Ascension Island and Tristan da Cunha) and the Turks and Caicos Islands; the territories of the British Antarctic Territory, British Indian Ocean Territory and South Georgia and the South Sandwich Islands, which have no indigenous population; and the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus.

9. The OTs have their own constitutions and domestic laws. Depending on their stage of constitutional development, OTs have a substantial measure of responsibility for the conduct of their internal affairs. However, under most of the constitutions, Her Majesty's Government, via Governors, retains responsibility for the OTs' internal security, defence and external affairs. Responsibility for external affairs includes ensuring that the OTs fulfil their obligations under the international human rights instruments that have been extended to them, or any obligations that an OT has entered into itself.

Constitution

10. It has long been argued that the right to freedom under the law is the very foundation of the constitution of the United Kingdom. It was a guiding principle in the struggles of people in the UK to assert their rights and to limit and define the powers of the monarchs of the historic kingdoms of Great Britain and Ireland. The great successes in that struggle, including the signing of Magna Carta in 1215, the passage of the Bill of Rights in 1689, and the Reform Acts of 1832 and 1867, and the Representation of the People Act 1928 (which gave women the right to vote on the same terms as men) were hard won, and help express our national identity.

11. The UK does not have a bill of rights in the modern sense, or a written constitution contained in one document. The system of parliamentary government in the UK is a result of a gradual evolution spanning several centuries. Under the UK's constitutional arrangements, the possession of rights and freedoms is an inherent part of being a member of our society.

National Human Rights Commissions

12. There are two independent national human rights commissions in the United Kingdom: the Commission for Equality and Human Rights (EHRC) and the Northern

Ireland Human Rights Commission (NIHRC). A third, the Scottish Commission for Human Rights (SCHR), is in the course of being established. All are publicly funded, but are independent of government.

13. The NIHRC is an independent statutory body set up in 1999. Its role is to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice, and to advise government on what steps need to be taken to protect human rights in Northern Ireland. It is able to conduct investigations, to assist individuals when they are bringing court proceedings, and to bring court proceedings itself.

14. The EHRC was established on 1 October 2007. Its remit is to champion equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights, and build good relations between communities, ensuring that everyone has a fair chance to participate in society. Its remit extends to England and Wales and Scotland. The EHRC brings together the work of Great Britain's three previous equality commissions (for racial equality, gender equality, and the rights of disabled people) and also takes on responsibility for new strands of discrimination law (age, sexual orientation and religion or belief), as well as human rights. It has powers to enforce equality legislation, and has a mandate to encourage compliance with the Human Rights Act.

15. Legislation to establish the SCHR was passed by the Scottish Parliament in November 2006. The SCHR is currently being set up, and is expected to commence operations in the Spring of 2008. The SCHR's main purpose will be to promote human rights and to encourage best practice in relation to human rights (its remit will not extend to equality legislation, as that is outside the Scottish Parliament's remit). It will also be able to review and recommend changes to Scots law and to the policies and practices of Scottish public authorities. It will have legal powers to obtain information and enter places of detention, and will be able to intervene in legal proceedings in human rights cases.

International Commitments

16. The United Kingdom is party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Convention on the Rights of the Child. On 30 March 2007 the UK signed the Convention on the Rights of Persons with Disabilities (CRPD) and aims to ratify the CRPD by December 2008.

17. The Government has announced its intention to implement the necessary legislative and procedural changes to enable ratification of the Council of Europe Convention on Action against Trafficking in Human Beings by the end of 2008.

Incorporation of International Treaties

18. International treaties ratified by the United Kingdom are not automatically incorporated directly into UK law. Instead, if any change in domestic law is needed to enable the United Kingdom to comply with a treaty obligation, the Government

makes that change, following normal parliamentary procedures, before it becomes a party to the treaty. The United Kingdom will not ratify a treaty unless the Government is satisfied that domestic law and practice enable it to comply.

Individual Petition

19. The Government reviewed its position with regard to individual petition to the United Nations Human Rights Treaty Bodies in 2004, and concluded that the practical value to the individual citizen is unclear. Therefore it decided to accept one of the provisions on an experimental basis – to enable the Government to consider in a more practical way the advantages and disadvantages of the right of individual petition. This was under the Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Since 2005, two applications naming the United Kingdom have been made to the UN CEDAW Committee. Both were declared inadmissible. In 2008, the Government commissioned an independent review of the CEDAW experiment, and expects to announce the review's conclusions by the summer of 2008.

C: Promotion and Protection of Human Rights

The European Convention on Human Rights and the Human Rights Act 1998

20. The UK is proud that British lawyers helped draft the European Convention on Human Rights (ECHR), which enshrines human rights in member states of the Council of Europe. The UK Government has sought to comply with its provisions for over half a century. However, for many years the ECHR was not a full part of UK law. Using it usually meant taking a case to the European Court of Human Rights in Strasbourg. That was often time-consuming and expensive.

21. For that reason, in 1998, the UK Government introduced explicit protection of human rights into the UK law by means of the Human Rights Act. The Act gives effect in domestic law to the rights in the ECHR which the UK has ratified (known in domestic law as "the Convention rights").[1] It works in three ways:

- First, it requires all legislation to be interpreted and given effect compatibly with the 'Convention rights'– as far as that is possible. Where it is not possible, in relation to primary legislation, a higher court may make a declaration of incompatibility. This signals to Parliament that a change in the legislation may be necessary, and triggers a power that allows a Minister to make a remedial order to amend the legislation to bring it into line with the Convention rights. Subordinate legislation that cannot be interpreted compatibly with the Convention rights may be quashed or disapplied (unless primary legislation prevents removal of the incompatibility).
- Second, the Act makes it unlawful for a public authority to act incompatibly with the Convention rights. If a public authority acts in such a way or proposes to do so, a case may be brought against it in a UK court or tribunal.
- Third, UK courts and tribunals must take account of Convention rights in all cases that come before them. This means, for example, that they must develop the

[1] Articles 2-14, 16, 17 and 18 of the Convention, Articles 1 to 3 of Protocol 1, and Article 1 of Protocol 13.

common law compatibly with the Convention rights. They must take account of Strasbourg case-law.

22. To date, on every occasion when the courts have declared legislation to be incompatible with the Convention rights (and where this has not been overturned on appeal), the Government has either referred the incompatibility to Parliament to achieve a legislative remedy or is preparing to do so.

23. A person bringing a separate case under the Human Rights Act will have to decide in which court or tribunal to start the proceedings. This is likely to depend on the subject matter of the complaint and the desired remedy. For example, if the Human Rights Act is relied upon to challenge a decision against which there is a right of appeal (e.g. a complaint concerning welfare benefits), this will usually be done at the relevant appeal tribunal. Where the case relates to a decision against which there is no specific avenue of appeal, the appropriate action will usually be judicial review in the High Court or (in Scotland) the Court of Session.

24. Such cases must be brought within the relevant time limit for the particular procedure, and (in any event) within the maximum time limit under the Human Rights Act of one year beginning with the date on which the act complained of took place. That period can be extended by the court if it considers it equitable to do so.

25. The Human Rights Act extends the power to award damages for a breach of the Convention rights to any court that has the power to order payment of damages or compensation in a civil case. However, when considering whether, and to what extent, to award damages under the Human Rights Act, the courts will have regard to the principles applied by the European Court of Human Rights.

26. The Human Rights Act also imposes a duty on Government Ministers when introducing new legislation. Under the Act, the Minister in charge of any proposed primary legislation has to give a statement to Parliament about the compatibility of the Bill's provisions with the Convention rights. This ensures that the Government thinks about the impact of the legislation on human rights before the Bill is debated in Parliament, and assists Parliament in its task of scrutiny.

27. In the explanatory notes accompanying the Bill, the Government also draws attention to the main human rights issues arising from the Bill. In the course of going through Parliament, most Bills are considered by the Joint Parliamentary Committee on Human Rights (see paragraph 29 below), which may make proposals on how a Bill can be made more consistent with the Convention or with other human rights instruments.

28. Since 2000, only once has a Bill been presented to Parliament with a statement that it could not be certified as being compatible with the Convention rights. This was the Bill that became the Communications Act 2003, which dealt with restrictions on funding for political advertising. This approach was supported at the time by the Joint Parliamentary Committee on Human Rights and was endorsed by Parliament, which passed the legislation. The High Court has subsequently held the legislation to be compatible with the Convention rights. The issue is now under consideration in the House of Lords

Joint Committee on Human Rights

29. As an aid to oversight of progress on the promotion and protection of human rights in the United Kingdom, Parliament has created a specialist Committee – the Joint Committee on Human Rights – to undertake inquiries on human rights issues and report its findings and recommendations to Parliament. The Committee consists of twelve members appointed both from the House of Commons and from the House of Lords. The Committee scrutinises all Government Bills and selects those with significant human rights implications for further examination. Although it cannot take up individual cases, the Committee looks at Government action to deal with judgments of the UK courts and the European Court of Human Rights where breaches of human rights have been found. As part of this work, the Committee looks at how the Government has used remedial orders to amend legislation following a finding by the Courts of an incompatibility with the Convention rights (see paragraph 21 above).

The European Court of Human Rights

30. The United Kingdom was one of the first countries to sign the ECHR. Since 1966, it has recognised the right of people within the jurisdiction of the UK to petition the European Court of Human Rights (ECtHR) in Strasbourg in cases where they believe their rights under the Convention have been breached. Although the Government introduced the Human Rights Act in part to remove the need for people in the UK to take cases to Strasbourg, people can still take cases against the UK to the European Court if they wish – though the ECtHR will normally expect them to have exhausted all available domestic remedies, including using the Human Rights Act, before it agrees to examine a case.

31. In 2007, 50 cases against the UK were heard at the ECtHR, of which 19 found at least one violation of the Convention rights.

32. The UK is committed to implementing judgments of the ECtHR in full and as quickly as possible, in line with its commitments under the ECHR. Of course, where a judgment requires primary legislation, that will take longer to prepare and (if necessary) consult before it goes before Parliament; for more straightforward changes, judgments of the ECtHR may trigger the remedial order procedure (see paragraph 21 above). The UK Government is at present considering whether it is possible to improve the mechanism by which it implements judgments of the ECtHR and takes remedial action in respect of declarations of incompatibility.

Economic, Social and Cultural Rights

33. The UK Government believes that social and economic rights are as important as civil and political rights. It is fully committed to a vigorous development of economic, social and cultural policy within the UK. It has consistently pursued a progressive agenda on social and economic policy and can point to sustained progress on social inclusion, reduction in unemployment, and increased funding for education and healthcare as evidence of its commitment to progressive domestic realisation of the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Indeed, certain provisions for delivery of economic, social and cultural rights (such as the National Health Service) have become so deeply embedded in

public consciousness that in popular discourse they are commonly accorded the status of rights.

34. This is not to say that Government believes that there is no room for further improvement in the development of economic, social and cultural rights policy in the UK. On the contrary, the Government continues to set challenging targets for improvement in those policy areas, and has taken a range of measures, including legislation and the adoption of policies and programmes that advance the principles and objectives set out in the ICESCR.

35. The UK has a collection of laws, regulations and administrative rules which individuals can use to challenge Government policy, providing a wide-ranging system of justiciable processes for the protection and enforcement of economic, social and cultural rights, although in a variety of forms. Further discussion of economic, social and cultural rights and the extent to which they ought to be justiciable is likely to arise in the course of the public consultation on a possible Bill of Rights and Responsibilities (see paragraph 121 below).

Other Protections

Equality Legislation

36. In Great Britain, several pieces of legislation to prohibit discrimination have been enacted over the past 40 years. The first was the Race Relations Act 1965 (now repealed and replaced by the Race Relations Act 1976), followed by the Equal Pay Act 1970, and the Sex Discrimination Act 1975. The Disability Discrimination Act (DDA) was introduced in 1995. Further legislation was introduced in 2003 and 2006 to prohibit discrimination on grounds of sexual orientation, religion or belief and age in employment and vocational training, in order to implement the European Framework Directive. Discrimination on grounds of religion or belief and sexual orientation outside the workplace was prohibited in 2007.

37. The DDA is the only UK-wide piece of discrimination legislation. Other discrimination law described here applies to Great Britain (GB). Northern Ireland legislation prohibiting discrimination broadly accords with GB legislation.

38. GB discrimination legislation generally prohibits direct discrimination, indirect discrimination, victimisation and harassment. It prohibits discrimination in the areas of employment (and employment-related areas), vocational training (including further and higher education), education in schools, the provision of goods, facilities and services, private members' clubs, the disposal and management of premises, and the exercise of public functions. Coverage of these areas is not uniform in relation to all the grounds protected by discrimination law.

39. The legislation imposes positive obligations on public authorities to promote equality of opportunity on grounds of race, disability and gender. This 'positive duty' model requires public authorities proactively to root out discrimination and to promote equality of opportunity in the design and delivery of policies and services, and in their capacity as employers. The duties may require positive action to address disadvantage and to integrate equality into all areas of a public authority's work

40. Following consultation in 2007, the Government is considering replacing the current legislation with a single Equality Act. As part of this, it is considering the case for extending protection from age discrimination outside the workplace and for extending positive duties on public authorities to the other protected grounds.

41. In Northern Ireland, additional protections have been established to promote equality. The Equality Commission for Northern Ireland (ECNI) was created following the 1998 Belfast Agreement. Its functions include the promotion of equality of opportunity; affirmative action; and good relations between people of different racial groups. The Commission also oversees the effectiveness of anti-discrimination and equality legislation; and the statutory equality duty put in place by section 75 of the Northern Ireland Act 1998, including investigatory powers to ensure compliance.
42. The Government of Wales Act contains provisions designed to promote equality and protect rights. In particular, Welsh Ministers must make arrangements to ensure that the Welsh Assembly Government operates "with due regard to the principle that there should be equality of opportunity for all people".

Data Protection and Freedom of Information

43. The Freedom of Information Act 2000 (FOIA), which came into force on 1 January 2005, gives members of the public the right to access information held by public authorities. The FOIA applies to recorded information held by public authorities in England, Northern Ireland and Wales. Scotland has its own equivalent legislation: the Freedom of Information (Scotland) Act 2002.

44. The public sector outside central government bodies receives at least 87,000 FOI requests per year. In 2006, central government received nearly 34,000 FOI requests. In 2006, 62% of resolvable requests to central government were met in full and a further 15% in part. If a requester is not content with a public authority's decision on access to information, they can ask the public authority to conduct an internal review. If they are still not satisfied, they may complain to the independent Information Commissioner, and subsequently to the independent Information Tribunal.

45. The Government is committed to ensuring that information sharing is undertaken in a secure and controlled manner, recognising that legal and process controls must be in place to ensure that information is not shared inappropriately or disproportionately.

46. The processing of personal data is regulated by the Data Protection Act 1998 (DPA), which came into force on 1 March 2000. Under the DPA organisations and individuals must comply with data protection principles. These principles include ensuring that data processing is fair and lawful; that data is processed only for specified and lawful purposes; and that data is accurate.

The Parliamentary Commissioner for Administration

47. Members of the public who believe that they have been treated unjustly as a result of maladministration can have their complaints investigated by the office of the Parliamentary Commissioner for Administration (PCA) - often referred to as the “Ombudsman” – established by The Parliamentary Commissioner Act 1967.

48. The PCA can investigate actions taken "in the exercise of administrative functions" by or on behalf of the departments of central Government. A complaint must be taken initially to a Member of Parliament who will decide whether to refer it to the PCA. The PCA is independent of Government, and reports to a committee of the House of Commons. Its reports are published.

49. A number of other "Ombudsmen" have also been established, for local government, for the National Health Service and the Legal Services Ombudsman.

50. There are separate independent ombudsmen for Scotland, for Wales and for Northern Ireland. Under the Scottish Public Services Ombudsman Act 2002, the Scottish Government is legally required to co-operate with investigations by the Ombudsman and to make reports available for scrutiny. The Public Services Ombudsman (Wales) Act 2005 established the Public Services Ombudsman for Wales to provide an independent and impartial investigation into alleged malpractice in the administration of public services in Wales. The Parliamentary Commissioner Act (NI) 1969 (superseded by the Ombudsman (NI) Order 1996) provides for an Ombudsman to oversee the work of Northern Ireland government departments. The Commissioner for Complaints Act (NI) 1969 (superseded by the Commissioner for Complaints (NI) Order 1996) provides for similar oversight of the wider public sector in Northern Ireland.

Complaints Against the Police

51. In England and Wales, complaints against the police are dealt with by the Independent Police Complaints Commission (IPCC), which came into operation on 1 April 2004, replacing the former Police Complaints Authority.

52. The IPCC has responsibility for ensuring that there are adequate arrangements in place for dealing with complaints or allegations of misconduct by any police officer or member of police staff. It also has authority to carry out independent investigations into complaints in more serious incidents. The IPCC was created to ensure greater confidence in the complaints system, and to promote respect for the human rights of individuals by ensuring that complaints could be independently investigated.

53. In 2006-07 the IPCC received 28998 complaints (an increase of 10% over 2006-7). These comprised 41584 allegations, of which 12683 (30%) were investigated (by the police and by the IPCC combined). Of the completed investigations, 1389 (11%) were substantiated (this equates to 3.3% of the total allegations).

54. Since becoming operational on 1 April 2004, the IPCC has started 189 independent investigations into the most serious matters (i.e. those investigated by the IPCC's own trained investigators). Of the 147 independent investigations started between 1 April 2004 and 31 March 2007, 90 were completed in that period.

55. In Scotland, complaints against the police are dealt with in the first instance by the police force concerned. If a complainant is not satisfied with how that complaint has been dealt with he or she can refer the matter to the Police Complaints Commissioner for Scotland (PCCS), whose post was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006. From 1 April 2007 to 24 January 2008, the

Commissioner received 262 enquiries and complaints about police forces, police authorities and policing agencies throughout Scotland.

56. The Police (Northern Ireland) Act 1998 established the Police Ombudsman for Northern Ireland, an independent body charged with investigating complaints about the police. The Ombudsman has independent control of the police complaints system and all complaints about the police must be referred to his office. Where the Ombudsman believes a criminal offence has been committed he passes the outcome of his investigations, with recommendations, to the Director of Public Prosecutions for his consideration. Where it is believed a disciplinary offence has been committed the matter is referred with recommendations to the Chief Constable or Policing Board, depending on the seniority of the officer. In the 7 years since the office was established, almost 23,000 complaints have been dealt with (as at 31 December 2007).

The Inquiries Act 2005

57. The Inquiries Act 2005 has updated and improved the whole statutory framework for public inquiries. The Act provides much greater clarity about the process of establishing and sponsoring an inquiry than previous legislation. Under previous legislation, Ministers established inquiries, set the terms of reference and appointed the chairman and panel members. They also had corresponding powers to end inquiries, terminate the appointment of panel members and alter the terms of reference, should circumstances warrant such action.

58. The Inquiries Act sets out these powers in more detail, and places explicit statutory safeguards on their use, such as the requirement to give reasons to Parliament for ending an inquiry. The Act's other important reforms include: updating the system to take account of devolution; applying the Freedom of Information Act to inquiry records; giving inquiries more effective powers to compel the attendance of witnesses and the production of documents; creating a statutory requirement to publish inquiry reports and lay them before Parliament; and introducing new measures to control costs.

Accountability and Oversight of the Security Services

59. To maintain their effectiveness the intelligence and security agencies must be able to operate in secret. However it is also important in a democratic society that there are effective safeguards and means of overseeing their work, with clearly defined political accountability for their activities.

60. Effective accountability and oversight is provided in three different ways:

- through Ministers, who are accountable to Parliament for the activities of the Agencies;
- through Parliament itself, to provide politically independent oversight of Agency activities; and
- through independent Commissioners, who provide judicial expertise on the Agencies' performance of their statutory duties, and an Investigatory Powers Tribunal, which investigates complaints by individuals about the Agencies' conduct towards them or about interception of their communications.

61. The oversight mechanisms are founded in three key pieces of legislation:

- the *Security Service Act 1989 (amended 1996)* which placed the Service under the authority of the Home Secretary and which set out the functions of the Service and the responsibilities of the Director General;
- the *Intelligence Services Act 1994*, which established a framework for Parliament to exercise oversight of expenditure, administration and policy of the three Agencies; and
- the *Regulation of Investigatory Powers Act 2000 (RIPA)* which established a Commissioner for the Interception of Communications, a Commissioner for the Intelligence Services and a Tribunal to examine complaints and hear proceedings under section 7 of the Human Rights Act 1998. There is also a Commissioner for Surveillance, originally established under the Police Act 1997.

Torture

62. The United Kingdom regards torture as an affront to the inherent dignity and right to respect which is the inalienable birthright of every human being. It is a crime against humanity, which degrades the victim and corrupts and debases the torturer. It corrodes every political system in which it is used, substituting fear for trust and servility for dignity. If that were not sufficient reason for its universal eradication, as a method of obtaining truthful information it is unreliable and self-defeating.

63. This is not a new position. Judicial torture has never been recognised in the common law of England or Scotland, though it was sometimes used with official approval until the seventeenth century. The last time examination by torture was inflicted in England was in 1640[2]. In Scotland it was used a little later than that. But by the Treason Act of 1709, an act of the United Kingdom Parliament, it was enacted that no person accused of any crime could be put to torture. That Act put an end to torture as a legal means of criminal enquiry in the United Kingdom, and was the first formal abolition of torture in any European state[3]. In addition, it has long been an offence in England and Wales, under the common law and also in the particular circumstances provided for in the Offences against the Person Act 1861 to assault a person. In Scotland, assault is an offence at common law.

64. Section 134 of the Criminal Justice Act 1988 makes torture illegal anywhere in the world by anyone of any nationality (See paragraph 78 below). The offence is committed if 'a person acting in an official capacity . . . intentionally inflicts severe pain or suffering on another in the performance or purported performance of his duties.'

Optional Protocol to the Convention Against Torture

65. The UK ratified the Optional Protocol to the Convention Against Torture (OPCAT) in December 2003 – the third country in the world to do so.

[2] *Torture* by David Hope (Lord Hope of Craighead), *International and Comparative Law Quarterly*, vol 53, October 2004, pp 807-832
[3] ibid.

66. Several independent monitoring bodies already exist in the UK (for example, Her Majesty's Inspectorate of Prisons, and the Mental Health Act Commission). The UK infrastructure is well established, has wide coverage, and provides inspection in depth. The UK Government intends the requirement of the Protocol to establish a National Preventive Mechanism (NPM) will be fulfilled by the collective action of all the existing statutory inspection bodies that possess powers of unrestricted access and unannounced visit. The Government does not believe, at the outset, that in order to establish the UK NPM, there is a need to create any new body.

67. The complex nature of the UK inspection infrastructure has required detailed discussion and agreement with and between the various independent bodies – who continue to pursue their regular activities. Although this has led to a delay, the formal establishment of the UK NPM is expected by summer 2008.

D: Achievements, Best Practices, Challenges and Constraints

Judicial, legal and official training, and education in human rights

68. The passage of the Human Rights Act 1998 was a significant event in the legal and constitutional history of the UK. It made rights in the European Convention on Human Rights directly enforceable in UK courts, and this required a major training programme for all those working in the legal system. Although the Act was approved by Parliament in 1998, it was not brought into force until October 2000, in order to allow time for legal professionals to be re-trained.

69. Between January and October 2000, the Judicial Studies Board co-ordinated training in the Human Rights Act for all judges. Training was by seminars, consisting of introductory lectures, case studies and plenary sessions. Speakers included Sir Nicholas Bratza, the UK judge on the European Court of Human Rights, and Judge Luzius Wildhaber, President of the Court.

70. From September 1999 onwards, training along similar lines was provided for magistrates' legal advisers – justices' clerks and court clerks – with a refresher day in the early autumn of 2000, immediately ahead of the implementation of the Act. Training for magistrates was then organised and delivered by the legal advisers.

71. The Bar Council of Great Britain provided formal training in human rights for some 6000 barristers. The Crown Prosecution Service provided three days training for all prosecutors, and issued a manual of guidance to all its staff listing all relevant European cases, with legal updates on new case law every fortnight.

72. Education on human rights was integrated into the curriculum for the Qualifying Law Degree in all UK universities, and also pervades the vocational courses for barristers and solicitors.

73. Nevertheless, in its 2006 *Review of the Implementation of the Human Rights Act*, the Government recognised that there was widespread misunderstanding of the Act amongst officials working in the public sector, and the review recommended an urgent programme of training and awareness raising. As a result, the Ministry of Justice has distributed over 100,000 copies of a new handbook, *Human Rights:*

Human Lives, to other Government departments, their sponsored bodies, and other organisations in the wider public sector. It has also produced a new third edition of its well-received *Guide to the Human Rights Act*.

74. In March 2007 the Department of Health (DoH) launched *Human Rights in Healthcare - A Framework for Local Action*. The framework provides National Health Service (NHS) organisations with guidance on how to apply human-rights-based approaches to improve service planning and delivery. The DoH is also working with five NHS Trusts to develop a series of practical human rights tools. These and a revised framework will be launched nationally in autumn 2008.

75. In a broader human rights programme launched as a result of the 2006 review, the Government also established a panel of senior officials to scrutinise the workings of the criminal justice system with regard to human rights, and a new website providing practical advice to officials working within the system. In addition, the Government has devised and delivered more effective training in human rights within Departments.

76. In association with stakeholders and experts in education and human rights, the Government is developing educational materials for 11-14 year olds on human rights protection within the UK. A range of materials is already available in UK schools about International Human Rights Conventions (such as the Convention on the Rights of the Child). The new materials should be ready for launch in June 2008.

Public awareness and engagement

77. Since the Human Rights Act came into force in 2000, it has been subject to hostility from certain sections of the media and from opposition parties. Misrepresentation of the facts in high-profile cases and repetition of unfounded myths have taken root in the popular imagination, leading to serious public misunderstanding of the Act. Although research[4] commissioned by the Government found that, in 2006, 84% of people surveyed believed that there should be a law to protect human rights in the UK, 43% thought that too many people (notably asylum seekers, foreigners, people seeking financial advantage, and lawyers) took advantage of the Act. Since then, Government Departments have sought to provide swift and accurate communications to counter misreporting of the Act whenever it appears, via the creation of a new human rights press officers network.

Prosecution of Zardad

78. The obligation of the United Kingdom under Article 4 of the Convention Against Torture to make torture a criminal offence in its domestic legislation, is fulfilled by the Criminal Justice Act 1988. One of the effects of Section 134 of the Act, as required by the Convention, was that all torture wherever committed, was made criminal in the UK jurisdiction. The first actual prosecution under Section 134 of the Criminal Justice Act, giving effect in the UK to Article 7 of the Convention, was brought to a conclusion in July 2005, with the conviction of the former Afghan warlord, Faryadi Zardad, and his imprisonment for 20 years. The prosecution was led by the then UK Attorney General. It is believed that this is the first time in the world

[4] *Human Rights Insight Project*, Ministry of Justice Research Series 1/08, January 2008

that a foreign national has been tried on charges relating to torture of victims who are also foreign nationals.

The Terrorist Challenge

79. The UK faces a serious and sustained threat from violent extremists who claim to act in the name of Islam, but are in fact pursuing a political agenda through indiscriminate acts of terrorism. This threat is international in scope, involving a variety of groups, networks and individuals who are driven by violent and extremist beliefs. They are indiscriminate – aiming to commit murder and cause mass casualties, regardless of the age, nationality or religion of their victims. Around 200 extremist networks are currently under investigation, some of which have both the intent and capability to carry out attacks against the UK or UK interests overseas. There are still others about which little or nothing is known. The level of threat from a terrorist attack is 'severe' – put simply, an attack is highly likely. The security services assess that the threat is not likely to diminish for some years.

80. When dealing with suspected terrorists, prosecution is, and will continue to be, the UK Government's preferred approach. In 2007, 37 people were convicted of terrorism-related offences in 15 cases. The Government will also keep under review the legislative framework that provides the range of powers to assist the police and the security services and intelligence agencies in the pursuit and disruption of terrorist and those who support their activities.

81. The protection of human rights is an integral and indispensable part of the UK's counter-terrorism effort – and it is important to emphasise that being strong on counter-terrorism does not mean being weak on human rights. On the contrary, respect for human rights is an important part of the fight against radicalisation. To quote Kofi Annan: "Human rights law makes ample provision for strong counter-terrorism action, even in the most exceptional circumstances." The most fundamental right of all is the right to life, and it is the duty of all governments to ensure that every appropriate measure is in place to minimise the danger to life which comes from terrorist attacks.

82. The UK's policies with regard to anti-terrorism are subject to five key principles, which remain constant. These are:

    a. that the Government only legislates to create terrorism-specific offences and powers where this is necessary because of the particular nature of the terrorist threat
    b. that, wherever possible, those who carry out, or are suspected of terrorist offences should be prosecuted.
    c. that legislation has to adapt to meet the evolving threat, in line with the UK's international human rights obligations.
    d. that there must always be safeguards to protect the rights of individuals affected by terrorism powers; and
    e. that there must be independent review of the operation of terrorism legislation

83. The UK Government makes a clear distinction between the violent extremists who seek to attack the UK and the faith they falsely claim to be associated with or to

represent. The vast majority of people in the UK and abroad reject both extremism and violence: the extremists represent only a tiny minority.

84. The powers within counter terrorism legislation are not aimed at a particular race, religion, or any other group. They are aimed at terrorists, whatever background or section of society they may come from. The Government is committed to improving and developing a close partnership with the Muslim community to combat terrorism. There is also appropriate Parliamentary scrutiny of the impact of counter terrorism powers on communities, including Muslim communities. The Home Affairs Committee continues to examine and report on this particular issue.

85. Section 44 of the Terrorism Act 2000 creates the power for the police to stop and search individuals within a designated area without first establishing reasonable suspicion. The use of stop and search is intelligence led.

86. Suspected terrorists are prosecuted using the most appropriate offences. This may be a general offence under the criminal law, or a specific terrorist offence. For both types of offence, trials are heard in open court using the normal rules of procedure.

87. Nevertheless, UK legislation does contain powers that can be used in the small number of cases where prosecution is not possible – for example, under the Prevention of Terrorism Act 2005, the power to make Control Orders which impose restrictions on those reasonably suspected of being involved in terrorism.

88. Control Orders affect an extremely small and targeted group of individuals; at the time of the last Quarterly Written Ministerial Statement to Parliament, on 12 December 2007, there were only 14 control orders in force. Control orders are not used arbitrarily; they are subject to mandatory review by the High Court at a hearing, applying judicial review principles, and the judge must agree with the Secretary of State's belief that there was a reasonable suspicion of involvement in terrorism-related activity. The highest court in the UK, the House of Lords, upheld the control order system in October 2007. As a result of the Lords judgments, the Prevention of Terrorism Act 2005 is fully compliant with Convention rights.

89. Where suspected terrorists are foreign nationals, an alternative means of disrupting their activity and reducing the threat to national security is removal from the country. However, the Government would not remove someone if to do so would be in breach of its obligations under the European Convention on Human Rights, in particular article 3.

90. Where the Government seeks to deport a person on national security grounds the person concerned has a right of appeal to the Special Immigration Appeals Commission (SIAC), which is a superior court of record, established by statute in 1997 in response to observations by the ECtHR in the case of *Chahal v the UK* (1996). SIAC has special procedures to allow it to examine all the evidence relevant to the deportation decision, including highly classified material, without jeopardising the source of such material through its unauthorised disclosure.

91. In the interests of security, the appellant and his chosen legal representative are not allowed to be present when such evidence – normally referred to as closed evidence – is being considered. Instead a Special Advocate – a lawyer with considerable

expertise and experience in the field, who has been security vetted to undertake such work – is appointed to represent the appellant's interests in closed sessions by providing independent scrutiny and adversarial challenge. Appeals from SIAC on a point of law can be made to the Court of Appeal and the House of Lords. At the end of January 2008, 23 national security deportation appeals were at various stages before the courts.

92. The UK has concluded memoranda of understanding with three countries (Jordan, Libya and Lebanon) to facilitate deportation of terrorist suspects in a manner consistent with its obligations under the ECHR and other international human rights treaties. Monitoring bodies have been appointed in Jordan, Libya and the Lebanon. Separate arrangements are in place for deportations to Algeria. SIAC has ruled in seven cases that these arrangements, and the changes that are happening in Algeria, are sufficient to protect those being deported. Eight Algerians have been returned under these arrangements, having chosen not to pursue their appeals. The assurances have been respected in their cases. A ninth man is awaiting deportation.

93. SIAC has ruled in seven further Algerian cases that the assurance arrangements, in conjunction with the changes that have taken place in Algeria, are a sufficient basis for concluding that deportation would be compatible with the UK's human rights obligations. SIAC has ruled in two cases where assurances have been obtained under the MoU with Jordan that the proposed deportations would not breach those obligations. SIAC has allowed appeals in two Libyan cases where assurances had been obtained. All of these cases, including the Libyan appeals, remain before the courts.

94. The UK has intervened (along with Lithuania, Portugal and Slovakia) in the cases of *Ramzy v the Netherlands and A v the Netherlands*, with a view to persuading the ECtHR to revisit its ruling in *Chahal v UK*. In 2007, it intervened in a third case (*Nasim Saadi v Italy*) and was invited to make oral submissions when this case was heard by the Grand Chamber of the European Court of Human Rights in July 2007.

95. The UK argued that, where a foreign national resists removal on the grounds that it would give rise to a real risk of ill-treatment contrary to Article 3 ECHR, the fact that the person poses a risk to national security is a legitimate factor to weigh against the risk of such ill-treatment. The UK argued that there was a need for the Court to clarify the appropriate standard of proof to be applied when assessing the risk of ill-treatment in such cases. The Court's ruling in *Saadi* is expected on 28 February. The other two cases have yet to be heard.

96. The Government believes that it should be entitled to have regard to the threat posed by the presence of a person in UK territory as well as the threat posed to him if he is deported. The Government is firmly of the view that the safety – and indeed the human rights – of the general public cannot be discounted and dismissed as irrelevant, and that the risk to the person concerned is not the only issue to be addressed. The Government does not accept that its intervention sends any sort of signal that torture is permissible: the UK's condemnation of torture remains unequivocal and its commitment to securing its eradication is unchanged.

97. Under the Terrorism Act 2000, as amended by the Terrorism Act 2006, a person suspected of being a terrorist may be arrested and detained before charge for a

maximum of 28 days. However, all detention beyond 48 hours is subject to judicial authorisation. There are regular hearings – at intervals of no more than seven days – during which the person concerned can make representations to the judge and be legally represented. A judge can only agree to continued detention if he is satisfied that the detention is still necessary, and that the investigation is being carried out diligently and expeditiously. A judge can of course grant less than 7 days extension, or indeed no extension if they feel further detention is not justified. A judge has used that discretion by granting one application for 24 hours rather than the full 7 days.

98. The Counter-Terrorism Bill introduced to Parliament on 24 January includes a proposal to allow an extension to the pre-charge detention limit in terrorist cases from the current 28 days to 42 days. If passed into law by Parliament, the new proposal will not extend the pre-charge detention limit beyond 28 days immediately, but will enable the limit to be extended in future – and only then if there is a clear and exceptional need to do so. The higher limit could only be made available if there was a joint report from the police and the Director of Public Prosecutions saying that there was a compelling operational need for it. The same rigorous process of judicial oversight which is in place for 28 day detention would be in place for detention of up to 42 days. The detention of individual suspects would remain a matter for judges, not Parliament.

99. Suspected terrorists are held before charge at Paddington Green police station in London. The Metropolitan Police Service accepts that these facilities may, in certain circumstances, be inadequate for extended periods of detention and require improvement.

100. The Terrorism Act 2006 contains the offence of encouragement to terrorism, to try to combat those who create a climate in which terrorism is more likely to flourish. To the extent that the offence also covers glorification of terrorism, it can only be committed if members of the public can reasonably infer that what is being glorified is conduct that should be emulated by them in existing circumstances.

101. Organisations believed to be involved in terrorism or connected with it may be proscribed under Part 2 of the Terrorism Act 2000. The decision is made by the Secretary of State who, of course, has access to the full range of intelligence material. However, any decision made by the Secretary of State to proscribe an organisation has to be approved by both Houses of Parliament. A proscribed organisation, or any person affected by its proscription, may apply to the Secretary of State for de-proscription. There is then a route of appeal to the Proscribed Organisations Appeal Commission. This is an independent tribunal made up of senior judges who are cleared to see intelligence material. The Commission can, if appropriate, appoint special advocates to represent the interests of the group concerned. There is then a further route of appeal to the Court of Appeal on points of law.

102. Most of the UK's anti-terrorism legislation provides for the appointment of an independent reviewer – currently Lord Carlile of Berriew QC, a distinguished lawyer and an opposition politician. He is given full access to intelligence and other material, and is able to review individual case papers. His reports are published and made available to Parliament

103. The Government seeks to prevent extremists from operating in the UK and to disrupt their opportunities to radicalise others. But it is equally committed to prioritising policies that tackle the real and perceived socio-economic inequalities that extremists exploit in their efforts to recruit others to support or engage in violence.

104. Developments in Northern Ireland demonstrate the effectiveness of the UK Government's approach to terrorism. An inclusive political process has encouraged paramilitaries away from violence and towards politics. Those who continued to involve themselves in violence and criminality have been pursued using targeted legislative provisions reflecting the particular tactics and features of Irish terrorism. In developing and operating those measures the UK Government has worked within human rights frameworks, particularly the ECHR. The reduction in the security threat following the Provisional IRA's statement announcing an end to its armed campaign in July 2005 enabled the removal of special legislative provisions that had been put in place to address the enhanced threat in Northern Ireland. Terrorism law in Northern Ireland is now largely the same as that in the rest of the UK, although some residual measures remain to target particular issues, including the ongoing threats to the administration of justice posed by paramilitary intimidation of jurors.

Asylum Seekers

105. The UK has a long and proud tradition of granting asylum and humanitarian protection to those who are fleeing persecution and torture. The UK Government is determined to maintain that tradition. However, it is important to preserve the integrity of the asylum system, and to ensure that it does not appear to be the subject of abuse.

106. Generally, asylum seekers are not permitted to work, and this remains the position for those refused asylum who have been found not to be in need of international protection. Nevertheless, it is not necessary for asylum seekers or refused asylum seekers to become homeless and destitute in the UK. Financial help – Asylum Support – is available to asylum seekers who would otherwise be destitute, from the time they claim asylum in the UK until their claim, including any appeal, is determined.

107. Families with dependants under 18 when their claim is determined continue to be eligible for asylum support, until the youngest child reaches 18 or the family leaves the UK. Single people, childless couples, or those families whose households did not include a minor dependant when their claim was determined may also be eligible for support. This is available to refused asylum seekers who would otherwise be destitute and are unable to leave the UK due to circumstances outside their control. It continues until the recipient is no longer eligible.

E: Key National Priorities

Pledges

108. The United Kingdom is deeply committed to the work of the United Nations to increase respect for human rights throughout the world. Accordingly it has pledged to work in partnership with the Human Rights Council to reinforce human rights at the

heart of the UN; to continue to support UN bodies; to work for progress on human rights internationally; and to uphold the highest standards of human rights at home.

International initiatives

109. As well as upholding human rights at home, the UK is committed to their promotion and protection internationally. We work on human rights around the world through our bilateral contacts; our membership of international organisations; through development aid and assistance; and in partnership with civil society.

110. Within the United Nations, the UK actively participated in establishing the Human Rights Council as a founding member and is now focused on making the body as effective as possible. In addition, the UK is committed to seeing the UN General Assembly's Third Committee deliver results in co-ordination with the work done by other parts of the UN human rights framework. An important part of the framework is the valuable work done by the Office of the UN High Commissioner for Human Rights (OHCHR). We currently give the OHCHR £2.5 million annually as a voluntary contribution, in addition to our regular budget contribution to the UN.

111. The UK co-operates fully with the UN's human rights mechanisms, and welcomes visits from all Special Procedures. In September 2007, the UK was the main sponsor of an initiative that successfully established a new Special Rapporteur on Contemporary Forms of Slavery.

112. The UK encourages the ratification of UN human rights instruments and, through development and other assistance programmes, works to ensure they are successfully implemented. For example, over the past 5 years the UK has lobbied globally to encourage the ratification of the Convention Against Torture and its Optional Protocol and has provided practical technical assistance where this was useful.

113. In addition to the UN, we actively engage on the full range of human rights issues with other international and regional organisations, such as the European Union, G8, OSCE, the Commonwealth, the Council of Europe, the World Bank and many others. We aim to promote the better integration of human rights in the international system as a whole and to ensure that human rights is central to the full range of work done by international bodies.

114. We recognise that development and human rights are inter-linked and mutually reinforcing. The UK supports country-led development strategies that integrate human rights. Our Department for International Development works to support partner governments in fulfilling their human rights obligations, and strengthening the ability of people to claim their rights.

115. The UK is committed to developing effective partnerships with other governments. We do this through shared commitment to three objectives: poverty reduction and reaching the Millennium Development Goals; respecting human rights and other international obligations; and strengthening financial management and accountability.

116. The UK puts these policies into practice through a range of programmes: For example, on the *right to education*, we have committed to spending £8.5 billion in support of education by 2016, mostly in Sub-Saharan Africa and South Asia. On the

right to health, the UK is the second largest bilateral donor to work on combating AIDS and has committed £1.5 billion over the period 2005-2008.

117. In implementing our commitment to human rights globally, the UK acts in a spirit of consultation, openness and accountability. Through our membership of a wide number of international bodies, and through our global network of overseas embassies, the UK works to support the desire of everyone to realise the full range of their individual human rights.

UK Armed Forces

118. The role of the Armed Forces is to defend the United Kingdom and its interests, and to strengthen international peace and stability. The Armed Forces are currently deployed in two principal operations: in Iraq and Afghanistan. In both of these, we are striving to build stability and security to improve the lives of the citizens of these nations. These are challenging goals vital to global stability.

119. On occasion, the use of force may be necessary to fulfill the aims of the Armed Forces. The use of offensive force will only be countenanced in situations where it is permitted by international law. The Armed Forces operate within a robust legal framework: UK military law always applies, wherever in the world the Armed Forces are serving. A range of international humanitarian and human rights law obligations may also apply. The UK House of Lords has ruled that the provisions of the European Convention on Human Rights (which applies in Iraq in very limited circumstances) are modified to the extent necessary by UN Chapter VII Security Council Resolutions. We are committed to always upholding the appropriate standards.

Constitutional Reform

120. In July 2007, the Government launched a programme – *The Governance of Britain* – to strengthen the relationship between Government, Parliament, and the people. The programme's key objectives are to invigorate democracy; to clarify the role of Government at central and local levels; and to re-balance power between Parliament and government. The programme also aims to find ways to give British people a stronger sense of national identity and citizenship. This will involve examining the rights and responsibilities that shape the relationships which people in Britain have with Government institutions and with one another.

121. First, in preparing a draft Constitutional Renewal Bill, the Government will consult the public on the role of the Attorney General, judicial appointments, protests near Parliament, Parliamentary control of war powers, and the ratification of treaties. Second, a debate on a British Statement of Values will involve a wide ranging discussion with the British people about the ideals and principles which bind people in the UK together as a nation, using a range of methods, including the Internet and local and national events across the country. Third, publication of a Green Paper in the first part of 2008 will launch a public consultation on a British Bill of Rights and Responsibilities. This will explore how to build on the Human Rights Act to reflect the rights, responsibilities and values that underpin UK society. Finally, an independent review of citizenship by Lord Goldsmith QC aims to articulate more clearly the significance of citizenship, and to recommend ways to

ensure that the UK's approach to citizenship is appropriate for contemporary issues of migration, personal identity and civic participation.

122. The 1998 Belfast Agreement tasked the Northern Ireland Human Rights Commission with advising the Secretary of State for Northern Ireland 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". Following the October 2006 St Andrews Agreement, a Bill of Rights Forum was established to assist this process. The Forum, due to report in March 2008, is specifically tasked with providing agreed recommendations to the Northern Ireland Human Rights Commission that will inform the advice that the Commission gives to Government.
