

UN CONVENTION AGAINST TORTURE
UK EXAMINATION: 17-18 NOVEMBER 2004

Opening address by Jonathan Spencer

1. Mr. Chairman, members of the Committee, ladies and gentlemen, good morning. I am Jonathan Spencer – leader of the UK delegation.

2. I am Director General of Clients and Policy in the United Kingdom Department of Constitutional Affairs. My Department takes the lead in the UK in the development of policy on human rights. As part of that role it has lead responsibility for ensuring that the UK fulfils its obligations under the UN Convention Against Torture. We prepared the UK's 4th Report under the Convention which we sent to you on 12 November 2003 (a year ago). And we have already provided you with a written response to the 43 questions you let us have in advance.

3. I am very pleased to be here today to discuss the UK's fulfilment of its obligations under the Convention with you. On a subject as serious as torture there is always plenty of room to increase knowledge and develop greater understanding. Therefore, we are very keen to hear your views and advice as experts on the Convention and the way it should work.

4. The UK regards its continuing relationship with the Committee as positive and productive. We have benefited from your advice in the past, and consider your work as being of the utmost importance. If I may say so, Mr. Chairman, for this examination the Committee has raised an extremely important range of issues on which we are glad to respond.

5. In particular, I realise that you are seriously concerned about the UK's involvement in Iraq and Afghanistan - and that is one of the reasons why you have decided to bring forward this examination. The UK welcomes your decision. Our intention from the start has been that our actions in both countries should be

strictly in accordance with international law, and in particular the Convention against Torture. And we strongly believe that we have fulfilled that intention. We are grateful for your invitation to explain our position in this public forum.

6. The facts of our history as a union of four nations, our colonial past, and our current international position combine to make any comprehensive account of the UK's performance under a very wide ranging treaty rather complex. For that reason, I would like to divide this opening presentation into three sections.
7. I will begin by discussing the UK's general implementation of the Convention insofar as the Metropolitan Area of the United Kingdom is concerned – covering issues 1 to 23 raised by the Committee for discussion at this examination, I will of course include Scotland, Wales and Northern Ireland, but also to deal with issues 31 to 33, the UK Crown Dependencies – the Isle of Man and the Channel Islands. I will also deal with the important subject of detentions under our anti-terrorism legislation - issues 9 and 10.
8. I shall then pass over to two of my colleagues: first, (on my right) Martin Howard, Director General of Operational Policy in the UK Ministry of Defence. Martin will describe the position in relation to the conduct of the UK armed forces abroad, in particular in Iraq and Afghanistan - issues 24 to 30 raised by the Committee.
9. Finally, (on my far right) Dame Audrey Glover who is representing the UK Overseas Territories will in turn talk about the implementation of the Convention in the UK Overseas Territories - issues 34 to 43 raised by the Committee.
10. May I begin, then, by saying that the UK unreservedly condemns the use of torture and continues to work with its international partners, including the United Nations, to combat torture wherever and whenever it occurs.
11. The United Kingdom regards torture as an affront to and a denial of 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 debases and

corrupts the torturer. It corrodes every political system in which it is used, substituting fear for trust and servility for dignity.

12. If that were not sufficient reason for its universal eradication, as a method of obtaining truthful information it is unreliable and self-defeating.

13. 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 1640¹ over 350 years ago. 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 state².

14. 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.

15. In relation to Issue 1 raised by the Committee, Section 134 of the Criminal Justice Act 1988 - enacted at the time we ratified the Convention - makes it a criminal offence for a public official or person acting in an official capacity to commit torture or cruel, inhuman or degrading treatment or punishment, whatever his nationality and wherever in the world he commits the offence. The penalty for this offence is imprisonment for life.

16. The United Kingdom ratified the UN Convention Against Torture on 8 December 1988, and it took effect on 7 January 1989. The UK also ratified the European Convention for the Prevention of Torture on 24 June 1988, and that treaty came into force in the UK on 1 February 1989.

¹ Lord Hope of Craighead, *Torture*, University of Essex/Clifford Chance Lecture, 28 Jan 2004, p.5

² *ibid.* p.12

17. As you know, on 10 December 2003 the UK ratified the Optional Protocol to the Convention Against Torture, the third country in the world to do so. It is still one of only a handful of countries to have ratified the Optional Protocol.
18. The UK pursues the worldwide abolition of torture through diplomatic activity, practical projects and funding for research. This includes two rounds of worldwide lobbying for the universal ratification of the UN Convention against Torture – since we began this lobbying 28 states have ratified. We also organise practical projects, including an educational programme in the UK for senior clinicians working in selected countries where the practice of torture is widespread. The UK also provides continuing financial support to the UN Voluntary Fund for the victims of torture and it supports anti-torture activities by the Organisation for Security and Co-operation in Europe.
19. I hope this shows that the UK's attitude to torture is one of unequivocal condemnation and of active pursuit of worldwide abolition. This is not merely a theoretical or aspirational position. As you can see, it is founded in a series of actions we have taken over the last few years. However like all states, the UK is faced regularly with difficult practical decisions in which it needs to balance the rights of its citizens, and citizens of other countries, with very pressing needs to protect public safety and national security. In taking action to protect public safety and national security, the UK is nevertheless constantly aware of its legal obligations, both domestic and international.
20. Having given this very brief account of the history of the UK's attitude to torture, I would now like to turn to the position in the UK at present with regard to the Convention itself.
21. With regard to issues 5 raised by the Committee, I know that the UK's compliance with Article 2 of the Convention has been a matter of concern to the Committee for some years now. Following discussion on the UK's Third Report, the Committee recommended that sections 134 (4) and 5(b) (iii) of the Criminal

Justice Act 1988 needed to be reformed to bring them into line with Article 2 of the Convention.

22. The UK firmly believes that its domestic law fully complies with Article 2 of the Convention. All acts of torture within the UK's jurisdiction are made criminal by Section 134 of the Criminal Justice Act. Since October 2000, the offence in section 134 is supported by the Human Rights Act 1998 which brings into UK domestic law provisions of the ECHR.
23. Section 6 of the Human Rights Act makes it unlawful for a public authority to act in a way which is incompatible with the rights in the European Convention on Human Rights – the ECHR. Accordingly, it is now clearly unlawful for a public authority to authorise or engage in conduct contrary to Article 3 of the ECHR, which prohibits torture and inhuman or degrading treatment or punishment.
24. Therefore, any person acting on behalf of a public authority cannot rely upon a defence of 'lawful authority' with regard to acts of torture. Section 3 of the Human Rights Act provides an additional protection in that it obliges public authorities, including UK courts, to interpret all legislation, so far as it is possible to do so, in a way which is compliant with the rights created under the ECHR.
25. We are very keen to hear the Committee's latest thinking on this, in light of our written submission. However, I would like to point out that the Northern Ireland Human Rights Commission has looked at this matter independently of the United Kingdom Government, and their submission to you of November 2004, indicates that they also believe that the UK is compliant with Article 2 of the Convention. They argue that "given the wider legal context [in the UK], and in particular the enforceability of ... [ECHR Article 3], the [Criminal Justice Act] is not in conflict with the Convention".
26. One of the effects of Section 134 of the Criminal Justice Act, as required by the Convention, was that all torture [inflicted by, or at the instigation of, or with the consent or acquiescence of a public official,] wherever committed worldwide, was made criminal in the UK jurisdiction. This is not a mere piece of theory.

27. As you may know, the first actual prosecution under the Section 134 of the Criminal Justice Act is currently under way in the UK. The prosecution is being led by the Attorney General, Lord Goldsmith, who is the most senior prosecutor in the UK. The defendant is an Afghan national, and it is believed that this is the first time in the world that a foreign national has been tried on charges relating to torture of victims who are also foreign nationals. I imagine that the Committee will watch the progress of this important practical application of the Convention with keen interest.
28. If I may turn to issue 21 raised by the Committee, on provision for individual communication to the Committee provided under Article 22 of the Convention, this is something the UK is keeping under consideration.
29. UK Ministers recently concluded a major review of the UK's position under a wide range of international human rights instruments, including the provision under Article 22.
30. They decided that they would like to consider the merits of individual communication on a more empirical basis. To enable them to do that, they have decided that the UK should accede to the right of individual communication under the Convention on the Elimination of Discrimination Against Women - CEDAW. The Government intends to accede to the CEDAW Optional Protocol on 10 December 2004. It intends to review the results of this initiative two years after the Optional Protocol comes into effect in the United Kingdom – so at the end of 2006. Again, I am sure the Committee will await Ministers' evaluation of the initiative with keen interest.
31. I would like to turn now to issues 9 and 10 raised by the Committee, on the subject of detentions under anti-terrorism legislation passed in the UK following the attacks in New York and Washington in September 2001.
32. These attacks demonstrated very starkly that international terrorists are able to inflict loss of life and destruction of property on a massive scale. Since then, the

United Kingdom has received a series of explicit threats, and in November 2003 the UK Consulate General in Istanbul was actually attacked, and the Consul General and other staff were assassinated.

33. The Anti-terrorism, Crime and Security Act 2001 introduced exceptional powers to counter the risks posed by terrorist activity of this kind. The powers contained in Part 4 of the Act are immigration powers not criminal offence powers. They enable Home Secretary to certify and detain foreign nationals who are suspected of involvement in international terrorism and are believed to present a risk to national security, but who cannot, for the time being, be removed from the UK. If it were feared that their removal from the UK would expose these people to torture, then removal would put the UK in breach of Article 3 of the Convention Against Torture and of ECHR Article 3. So these provisions are in fact there precisely to provide protection to these people against torture, in compliance with our international obligations under the Convention.
34. Normal immigration detention powers are restricted to the period necessary to effect removal or deportation. As soon as it becomes clear that there is no realistic prospect of removal within a reasonable timescale, the individual can no longer lawfully be detained. In view of the emergency that threatens the life of the nation, and to forestall any argument that detention of those certified under ATCS Act part 4 would not comply with ECHR Article 5 – the right to liberty and security – the UK exercised its power under ECHR article 15 to derogate from Article 5. A parallel derogation was also sought from article 9 of the International Covenant on Civil and Political Rights. If we need to derogate from these instruments we do so publicly, not secretly and in private.
35. The UK Government believes that the derogations were a necessary and proportionate response to the emergency, and that belief has since been upheld by the courts in the UK. The Special Immigration Appeals Commission – SIAC – and the Court of Appeal have both upheld the Home Secretary's conclusion that there is an emergency threatening the life of the nation within the terms of Article 15 of the ECHR.

36. SIAC considered that the provisions of the Act were discriminatory contrary to Article 14 ECHR, but the Court of Appeal reversed that decision and upheld the British Government's view. The matter is now under consideration by the House of Lords in its judicial capacity as the highest court in the UK.
37. The Government has undertaken that the Part 4 powers will only be used in connection with the threat posed by those linked to Al Qaida and its associated groups. In our view, they remain a necessary and a vital weapon in the Government's armoury against suspected foreign terrorists who pose a serious and continuing risk to national security.
38. The need for the Part 4 powers is kept under frequent review. They must be reviewed annually by Parliament, and they will in any case expire in November 2006. In addition, a committee of Privy Counsellors (senior Parliamentarians and similar people) reviewed the entire Anti-terrorism Crime and Security Act in 2003. And Lord Carlile – a respected barrister and judge, and a member of one of the opposition parties in the UK – reviews the operation of Part 4³ of the Act annually.
39. These powers have been used very sparingly. To date (last month) a total of 17 people have been certified under this power, of whom 12 remain in detention.
40. Anyone detained under the part 4 powers is free to leave the United Kingdom voluntarily at any time. 2 individuals have chosen to do so: one to France; the other to Morocco.
41. Those certified have a right of appeal to the Special Immigration Appeals Commission – SIAC. All 17 have exercised this right of appeal. SIAC has heard 16 appeals and upheld the Home Secretary's decision to certify in all but one of the cases, leaving one appeal outstanding.
42. One of the detainees has been released on bail, and one was released following a successful appeal against certification.

43. And furthermore, the Home Secretary recently revoked one of the certificates and released one of the detainees. He keeps all of the certificates under review and as a result of a new assessment and recent developments regarding that particular detainee, he decided that certification was no longer appropriate in that case.
44. The detainees held in prison are able to have access to family and friends, to associate with other prisoners, make telephone calls, write and receive letters. They receive comprehensive medical services. They have access to an Imam.
45. Most importantly they have the same access to their lawyers as any other prisoner. They are not incommunicado, and if they wish to make any allegations about their treatment they can bring proceedings and claim damages in the same way as anyone else.
46. The determinations for the first ten appeals were handed down together. The ten appellants were given leave to appeal to the Court of Appeal, and the judgement on that appeal (A and others versus the Secretary of State for the Home Department) was given on 11 August.
47. Following that judgment, concerns have been raised by the Committee and others that evidence brought before SIAC in connection with these appeals may have been extracted under torture.
48. I would like make it crystal clear that the UK Government does not believe that any material used against the detainees has been obtained by torture.
49. Indeed, both SIAC and subsequently the Court of Appeal found no evidence to suggest that the Home Secretary had relied on any material obtained by torture.
50. The question whether material contained in the Secretary of State's case might have been obtained by third countries by torture, and then passed on in

³ Sections 21-23

diplomatic and security agency exchanges of information, was raised in the 5th individual appeal (that of E). In that appeal SIAC emphatically rejected any suggestion that any evidence relied upon by the Secretary of State was or even may have been obtained by torture. The point was adopted by all the appellants. In so far as SIAC made a finding in E's case that there was no such evidence it encompassed the generic evidence in all of the other cases. Had there been any question of its being established that torture evidence was part of the Secretary of State's case in any of these cases, then SIAC would undoubtedly have said so. They did not.

51. This issue was also considered by the Court of Appeal, who upheld SIAC's findings. In his judgement (August 2004), Lord Justice Laws declared that it was "plain that there was no evidence in any of the appeals which should have persuaded SIAC that any material relied on by the Secretary of State had in fact been obtained by torture or other treatment in violation of ECHR Article 3. Nor did SIAC think there was." Those are Lord Justice Law's exact words.

52. As you know the detainees are appealing to the House of Lords on this and other matters. I would not wish to comment further on behalf of the UK Government until the outcome of the appeal is known.

53. Of course, the vast majority of cases involving the treatment of foreign nationals in the UK have no connection with international terrorism. I would now like to say something, in response to issues 7 and 8 raised by the Committee, about treatment of refugees and asylum seekers.

54. In 2000, 2001 and 2002, the UK received more asylum seekers than any other EU Member State. However, it was found that the majority of applicants were not in need of protection and were claiming asylum as a means of side stepping mainstream immigration controls.

55. Because of that, the Government legislated⁴ in 2002 to deter misuse of asylum without in any way undermining the UK's commitment to protecting genuine refugees. The legislation introduced out-of-country appeals for applicants making asylum claims that are certified as being clearly unfounded. It applies to any clearly unfounded claim, but its main focus has been on clearly unfounded claims made by residents of countries that are designated to be generally safe.
56. As of 30 June 2004, 1850 decisions had been made on asylum applications from nationals of these countries since the Act came into effect. Of these, 1715 decisions have been to refuse asylum and certify as clearly unfounded. So the vast majority of cases.
57. If a person whose asylum claim has been certified as clearly unfounded lodges an application with the Administrative Court (part of the High Court) for permission for Judicial Review, the person will not be removed from the United Kingdom until that application has been dealt with by the Administrative Court High Court.
58. Of the 194 appeals that have so far been determined by the Immigration Appellate Authorities, 3 have been successful.
59. Earlier this year new legislation [the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 introduced updated provisions on safe third countries. It contains a list of safe third countries – essentially the EU Member States, Iceland and Norway - to which asylum seekers can be sent without substantive consideration of their claims if one of those countries is the appropriate one to assess the claim. The appeals system has been streamlined, and a new criminal offence has been introduced for those who destroy or dispose of their documents during the course of their journey to the UK.
60. The number of claims for asylum in the UK has been reduced significantly. Figures fell from over 84,000 in 2002, to just under 50,000 in 2003. This downward trend has continued into 2004. The number of asylum applications

⁴ Nationality, Immigration and Asylum Act

made in the second quarter of this year was 26% lower (7920) than in the equivalent period of 2003.

61. However, The Government is entirely clear that this reduction has not been at the expense of applicants who genuinely need protection. UK authorities are now better able to identify genuine refugees speedily and to begin their integration into UK society. The Government has also taken steps to improve the quality of asylum decision making and is actively involving The United Nations High Commissioner for Refugees in this work. Each substantive asylum application is considered on its individual merits and in full conformity with the Refugee Convention, as well as the UK's obligations under the ECHR.

62. The routine use of prison accommodation to hold immigration detainees ended in January 2002. Most immigration detainees are held in Immigration Service removal centres. There are 15 places for immigration detainees at Maghaberry prison in Northern Ireland. Some immigration detainees are housed there because the numbers are too few to warrant a removal centre in Northern Ireland (i.e. not a prison). However, those held there are given the choice of moving to a removal centre in Great Britain.

63. Some detainees considered unsuitable for removal centres for reasons of security and control may also be held in prison. They include individuals who are awaiting deportation on completion of sentences for criminal offences.

64. This leads me into the more general subject of conditions of custody in the UK – raised by the Committee under issues 12, 13, 14, 15, 16, 19 and 20. This is, of course, a very broad subject covering many different types of activity – policing, prisons, juvenile care etc., each of which is organised slightly differently and governed by different rules in the different jurisdictions within the United Kingdom.

65. We have provided tables giving summarised statistical information requested by the Committee at Appendix A and Appendices 1 to 5 of the Formal Written

Comment: Removed at request of Bob Daw – figures unreliable

Response to the issues raised by the Committee, and of course we are happy to engage in discussion based on that data.

Comment: FCO recommend deletion of this para

66. Significant progress has been made in improving conditions for prisoners in the United Kingdom over the last two decades.

67. Routine reading of prisoners' correspondence was ended in 1991, except for high risk prisoners.

68. A programme to provide all prisoners in England and Wales with 24-hour access to sanitation was started in 1991 and completed in 1996. As you may be aware, a similar programme of modernisation and refurbishment is currently under way in Scotland. On the Isle of Man, planning permission has been granted for the building of a new prison, and the Isle of Man Government hopes that work will commence by the end of this year.

69. Reducing levels of suicide and self-harm is a key priority for the Prison Services in all jurisdictions within the UK. Measures to achieve this include anti-bullying strategies, support for those withdrawing from substance abuse, and provision of access to confidential counselling services. All Prison Services are determined to reduce to the minimum all types of discrimination. And programmes and strategies have been developed to deal with the special needs of women and young people held in custody.

Comment: Removed at request of Bob Daw

70. New bodies to deal with police complaints have been established. An independent Police Complaints Commission for England and Wales came into being on 1 April this year. The new Commission has the power to carry out independent investigations, or manage police investigations of the most serious complaints and allegations of misconduct. In Northern Ireland the office of Police Ombudsman was established on 6 November 2000. And the Scottish Executive has pledged to set up a new independent police complaints body within the lifetime of the current Scottish parliament.

71. New legislation has been introduced in England and Wales to outlaw the practice of female genital mutilation, and similar new legislation is expected in Scotland during the current parliamentary session. This was raised by the Committee under issues 18. Both sets of legislation will make the practice an offence overseas as well as domestically.
72. However, legislation is seen as only one element in dealing with this problem. Both in England and Wales, and in Scotland, provision of information about the health consequences of female genital mutilation, and support within the practising communities are seen as the real key to eradication of the practice.
73. Under issue 23, the Committee asked for information on the current status of the Mental Health Bill. As part of an overall strategy to improve mental health services in England and Wales, a draft Mental Health Bill was published on 8 September 2004. It will now be subject to pre-legislative scrutiny before undertaking its passage through Parliament. The Parliamentary Committee considering the Bill will report by the end of March 2005. This process allows those concerned with the effects of the proposed legislation to have a stronger say in the final drafting of the Bill.
74. This Bill is intended to provide the first major overhaul of the system since the 1950s. It sets out a new legal framework for the formal treatment of people suffering from mental disorders, including mentally disordered offenders.
75. The Bill aims to make significant improvements to patient standards, to provide a modern legal framework in line with modern patterns of care and treatment and human rights law; and to protect public safety by enabling patients to get the right treatment at the right time.
76. The Bill introduces a new definition of mental disorder. This, and carefully drafted conditions for compulsory treatment will ensure that all patients, whatever their diagnosis, can be considered on the basis of their individual needs.

77. The Bill will introduce new rights and safeguards for patients, including, wherever possible, the patient's own choice of a nominated person to help and represent them. All compulsory treatment lasting more than 28 days will be independently authorised by a new Mental Health Tribunal. For offenders, all compulsory treatment over 28 days will be authorised by the courts. Tribunals and courts will be independently advised by experts drawn from a new expert panel.
78. My Department acts as the liaison point with the Governments of the UK Crown Dependencies, and I am pleased on behalf of the Governments of Guernsey, Jersey and the Isle of Man, to update you on matters about which you have requested information.
79. On issue 31 raised by the Committee, in Guernsey, rules on immigration are governed by the Immigration (Guernsey) Rules 1999. Decisions on leave to enter Guernsey are always taken by a senior immigration officer. In cases of dispute there is an informal procedure for review by the Lieutenant Governor. In addition, a Judicial Review procedure enables the Courts to supervise the way in which public bodies exercise their powers. This process applies to decisions taken by Immigration Officers when all other remedies have been exhausted.
80. Legislation to establish a Tribunal Appeals Service is currently in the process of being drafted and will be considered by the legislature of Guernsey – that is the States of Guernsey - in due course. The legislation will enable the States to prescribe a list of the Departments and other bodies which will come within the scope of the Law and to list the types of dispute over which the Tribunal Appeals Service will have jurisdiction. The Law Officers of Guernsey consider that immigration appeals will fall within the scope of this Service.
81. On issue 32 raised by the Committee, in Jersey, the Police Procedures and Criminal Evidence (Jersey) Law, 2003, was given Royal Assent on 17 December, 2002 and registered in the Royal Court on 3 January, 2003. It relates to the powers and duties of the police, persons in police or customs detention, criminal evidence, and the conduct of criminal proceedings.

82. Parts 1, 8 and 9 of the Law came into force on 18 March, 2003. Codes of Practice and Royal Court Rules in line with the Law have now been drafted, and the remaining parts of the Law, with the exception of Part 5, concerning bail and detention, and Part 11, concerning the control of intrusive surveillance, are likely to come into force on 1 December, 2004, subject to the approval of the States Assembly.

83. On issue 33 raised by the Committee, the Isle of Man Government has provided a detailed response to your request for information on implementation of the recommendations of the European Committee for the Prevention of Torture, which forms Appendix 7 to the UK's formal response to the Committee. I do not propose to summarise that response now. I have already referred to progress on the building of a new prison on the Island. The Chief Secretary to the Isle of Man is a member of this delegation, and I am sure she will be happy to give you any further information you require.

84. That concludes my general remarks on the UK domestic jurisdiction. As I said at the beginning of these remarks, I would now like to give the floor to my two colleagues. First, Martin Howard, who will speak on the conduct of the UK armed forces abroad, in particular in Iraq and Afghanistan; and then Dame Audrey Glover, who will deal with the UK overseas Territories.

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88. Good morning. As Jonathan said, my name is Martin Howard and I am the Director General Operational Policy in the UK Ministry of Defence. I am here to provide information on the conduct of the UK Armed Forces abroad, in particular in Iraq and Afghanistan.

89. We have had troops on the ground in Iraq since March 2003 and in Afghanistan since November 2001. In both cases it is important to acknowledge that part of the purpose of their presence in both countries is to help create a climate in which human rights can flourish. In both countries the UK Government is at the forefront of efforts to do this. We believe that this is best achieved through direct

engagement with the authorities of those countries, both by working directly with them and leading by example.

90. You have received our written response about the situation in Iraq and Afghanistan. As you are aware, and as Jonathan Spencer has said, the UK, in giving effect to the UN Convention Against Torture, extended universal jurisdiction to the crime of torture in section 134 of the Criminal Justice Act 1988. Members of UK armed forces are subject to this provision whilst on operations abroad. Military personnel are fully informed of their responsibilities and obligations under national and international law, not only through training received prior to deployment, but also through standard operating procedures which are developed in line with legal advice. All UK military personnel deploying to Iraq and elsewhere are briefed that prisoners, detainees and civilians must be treated with dignity and respect, and must not in any way be subject to abuse, torture, inhumane or degrading treatment.

91. We train all our forces personnel in the Laws of Armed Conflict, including the handling of detainees, as one of their mandatory annual Individual Training requirements. In addition the country-specific operational training package received by all UK forces prior to their deployment includes specific briefs on arrests and handling of detainees. Training and operating procedures are therefore designed to ensure that UK national law and our obligations under international law govern the actions of British Forces at all times. Military training is fully compliant with Article 10 of the Convention.

92. In terms of the operations of our Armed Forces, the implementation of the Convention applies regardless of whose jurisdiction is applicable to the territory in which they are operating. But in our written response, we have made clear that the broader obligations under the Convention, such as those in Articles 2 and 16 to prevent torture or other acts of cruel, inhumane or degrading treatment or punishment can only be fully implemented by the sovereign government of the territory in question. So while we are happy to say that UK personnel serving in Iraq and Afghanistan comply with the prohibitions set out in the Convention, we are not claiming to have established full compliance with the Convention

throughout the UK areas of responsibility in these countries. Nevertheless, as a matter of policy – as I have already said – we are doing our utmost to promote human rights in these countries.

93. On detention facilities, an area in which I know the Committee takes a strong interest, I believe our record is one of which the UK Armed Forces can be proud. Initially in Iraq, individuals detained by British Forces were housed in the US detention facility at Camp Bucca, in Umm Qasr. A British Monitoring Team and Prisoner Registration Unit were based permanently at the Camp to ensure that all individuals for whom the UK was the detaining power were treated appropriately. The treatment of these individuals is also covered by an MOU with the US which confirmed that the UK remained the detaining power and confirmed that those transferred were entitled to the proper protection of the Geneva Conventions. Since 15 December 2003, British held internees have been housed at the UK-run Divisional Temporary Detention Facility at Shaibah in Southern Iraq. This is the only UK detention facility in Iraq and houses all British held internees. Throughout the period of UK detention operations the ICRC have told us they have been generally satisfied with our approach and have described conditions of internment as “fairly good”. Clearly our relationship with them is confidential, so there is not much that I can say, other than that we have and continue to work closely with the ICRC to ensure prisoners’ concerns are addressed.

94. Following the deployment of the Black Watch battlegroup to an area of operations outside of the UK-led Multinational Division (South East) area of responsibility, separate arrangements have been put in place for the handling of any individuals interned as a result of that operation.

95. Internees held by the UK at Shaibah are free to move around (i.e. they are not restrained unless they pose a specific threat to coalition personnel). They can exercise freely and can practise their religion freely as they wish. They are provided with halal food three times per day. If they request a change to the menu for religious reasons this can be accommodated. They are also provided with bottled fresh water as they require. All internees have a medical

examination when they arrive and when they leave. There is a medical centre on site with a Doctor on call. Hospital treatment, if required, is provided at a UK military hospital in Shaibah to the same standard as that provided to our own personnel.

96. Although UK internees at one time numbered in the hundreds we have regularly reviewed their cases and released individuals who no longer pose a threat to us. As at 14 November 2004, there were only 10 internees held at Shaibah. No women or individuals under the age of eighteen are currently held. Although we hold no criminal detainees, we work closely with the Iraqi authorities to help apprehend criminal suspects. Where criminal suspects are captured by British Forces they are handed over to the Iraqi authorities as soon as is practicable.

97. In Afghanistan we have one small temporary holding facility at Camp Souter in Kabul which is currently empty. This facility has been used on less than fifteen occasions since its construction.

98. It is in this context of working with the Iraqi and Afghan authorities, in circumstances where they have criminal jurisdiction, which leads us to say in our written submission that Article 3 of the Convention, concerned as it is with the removal by expulsion, return or extradition of an individual to another State, is not applicable. But it would be quite wrong to conclude from this that we were not concerned that those we hand over to the respective national authorities in Afghanistan or Iraq are treated appropriately.

99. Our MOU with the Iraqi Ministries of Justice and Interior, for example, provides that detainees whom we hand to the Iraqi authorities be humanely treated. If we had reason to believe that the Iraqi authorities were not complying with this requirement, we would take the matter up rapidly. The same principle applies in Afghanistan where we have a Military Technical Agreement with the Afghan government.

100. As I said at the outset, in the longer term the UK believes that positive engagement with the local authorities to improve conditions in places of detention

is likely to be the most effective way of ensuring that standards are raised. As an example, we are providing assistance to the Iraqi prison sector. Two senior UK Prisons Advisors and four Prisons mentors are providing training, mentoring and advice to the Iraqi Correctional Service. To date, they have trained over 450 ICS personnel including Prison Governors and senior ICS staff.

101. We are also clear of our responsibility to investigate when there has been potential wrongdoing by UK service personnel. As we said in our written submission, all deaths, injuries or allegations of ill-treatment of civilians in Iraq by UK Armed Forces are investigated by the Service Police. 156 cases of this type involving Iraqi citizens have been or are being investigated covering a wide range of incidents including fatal road traffic accidents and incidents in which UK Armed Forces have returned fire after being attacked. Only a small number of cases (17) could be categorised as alleging inhumane or degrading treatment or torture. The 17 cases include all cases relating to deaths in detention and all cases which could be regarded as alleging deliberate mistreatment.

102. Of these 17 cases, so far, eight cases have closed with no crime established; five investigations are still ongoing; three are under consideration by Service legal and prosecuting authorities; and one case has been directed for trial. As trials have not yet taken place, we cannot at this stage release details of the alleged offenders.

103. I am very limited in what I can say about the 17 cases – on the one hand the Committee would not wish to see me prejudice the cases which are ongoing and on the other hand it would be wrong to go into details about allegations where no crime has been established. However, analysis of the cases as a group – or for that matter any of the Service Police investigations – leads to no suggestion that the UK Armed Forces have been involved in systematic abuse of human rights in Iraq. Indeed the number of investigations needs to be considered against the fact that some 65,000 UK Servicemen and women have served in Iraq. Only a tiny minority have been involved in incidents involving the alleged ill treatment of Iraqi civilians. We therefore reject the suggestions made by Physicians for Human Rights in their submission to you that we need to

establish an independent inquiry. I can assure you, however, that the allegations raised with us are the subject of Service Police investigations. We will not accept behaviour which does not match the high standards we expect from the men and women in our Armed Forces.

104. Finally, in this section, I should like to make some comments about the elements of the REDRESS submission to the Committee which discussed our operations in Iraq. REDRESS's submission raises three issues:

- First REDRESS raises the use of hooding. We have been quite open about the fact that this practice was used for the purpose of temporary detention, as a substitute for blind folding, early in our operations but is no longer used now. No one has suggested it was used for sinister purposes, such as during interrogations. And the Committee should be clear that blindfolding or hooding during interrogations has been banned by the UK since 1972. Nevertheless, I know hooding is an area where previous Committees have made statements, so perhaps you will wish me to say more tomorrow.
- Secondly REDRESS raise an alleged incident on which I am afraid I cannot comment further, other than to confirm that it is being investigated thoroughly.
- Thirdly REDRESS appear to conflate the UK Government's position on the Applicability of the European Convention on Human Rights to Iraq with our obligations under the Torture Convention. Put simply, we have argued in Court that the ECHR was never intended to cover the kind of situation we faced in Iraq. The procedural obligation, for example, to investigate every civilian killing, to the standards we apply in Europe doesn't make sense in a country where we regularly have to return fire, but where is not possible then to remain on the scene while forensic evidence is collected from the scene. It is quite wrong, however, to conclude from this that our Armed Forces are somehow operating above the Law. We are clear that the applicability of the ECHR and Torture Convention are entirely separate matters. UK Forces are subject to English Law wherever they serve in the world including the Convention's prohibition of torture and other mistreatment.

That concludes my opening comments.

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Thank you [Martin].

105. Firstly let me say how pleased I am to be here today representing the UK's Overseas Territories, along with my colleague Lana Hoyoung, the Permanent Secretary from Anguilla. Like Jonathan and Martin I am grateful for this opportunity to discuss with you how the Overseas Territories have fulfilled their obligations under the Convention.
106. The UK has 14 Overseas Territories (including the Sovereign Base Areas of Cyprus) with a total population of approximately 202,000. British Antarctic Territory, British Indian Ocean Territory and South Georgia and South Sandwich Islands have no settled population.
107. The Overseas Territories are constitutionally not part of the United Kingdom. They have separate constitutions, and most of the Territories have elected governments with varying degrees of responsibilities for domestic matters. The Governor, who is appointed by, and represents, HM the Queen, retains responsibility for external affairs, internal security (including the police), defence, and, in most cases, the public service. This means that the Overseas Territories enjoy the maximum possible degree of self-government consistent with the UK government's overall responsibilities and international obligations.
108. HMG are working with the Overseas Territories to ensure that international standards are met. We have employed a Prison advisor, who regularly visits prisons in the territories and provides them with recommendations on possible improvements. The Annual Meeting of OT Prison Governors is taking place at the moment in Monserrat We have also funded a study on alternatives to

custodial sentences. There was a follow up Workshop in BVI from 9-10 November to take forward the recommendations that came out of this study. There is also an ongoing study on financing of legal aid in the Overseas Territories. The Department for International Development in the UK will be recruiting a human rights advisor later this year who will advise on strategies for child protection and juvenile welfare, as well as raising awareness of human rights.

109. The Overseas Territories are making an effort to take account of the Convention Against Torture and have made progress with their implementation of it. I would like to give you a few examples of developments in the Overseas Territories to highlight the ongoing progress that is being made. I have drawn these examples from areas where you have expressed an interest.

110. In Anguilla, a new prison wing that had been built to house 20 persons and has 8 more cells added that can house 16 persons to ensure there is no overcrowding. There are some 33 inmates at HM Prison. The Prison also has an ongoing educational programme in Maths and English, along with remedial reading lessons for those who wish to take part.

111. The Ministry for Social Development has secured a building for alternative care to avoid having non-violent juveniles locked up in an adult prison. Criminally oriented juveniles are still housed in HM Prison but are being held separately and apart from adult prisoners. The Executive Council has approved the appointment of two probation officers from next year.

112. In Bermuda the Police Complaints Act was established in 1998. It monitors investigations of civilian complaints against officers of the Bermuda Police Service with regard to allegations of misconduct, neglect of duty or negligent performance of duty. Complaints alleging criminal assault are dealt with by the Director of Public Prosecutions. The powers of the PCA are set out in the additional information which we have submitted.

113. As a result of various legal deficiencies found in the operation of the Act it is going to be amended as are the Orders made under it with a view to making the review process more effective and quicker.
114. Since 1999 there have been a total of 336 complaints of which 244 have been resolved, 11 are unaccounted for and 83 are in progress. 43% of the complaints were for rudeness, 25% for assault (prevalent among those dealing with drugs or gangs) and 25% of the resolved complaints were found to be unsubstantiated. By October 2004 the backlog of complaints had largely been dealt with.
115. In the Cayman Islands the Government has largely accepted the recommendations of the 2001 *Ramsbottom Review*, and the implementation of a number of these recommendations has been completed. Further accommodation has been provided at the main Northward Prison along with improvements to the High Security Unit.
116. A separate detention centre for juvenile prisoners has been established. Progress has also been made in other areas such as staff training and induction; education of prisoners; the provision of religious facilities; sentence planning and general good order. A Board of Visitors has been established and the prison now has a non-UK Director and Assistant Director.
117. The Overseas Prison Adviser, of whom I spoke earlier, undertakes two visits per year to Her Majesty's Prisons Northward and Fairbanks, and inspects the juvenile facility at Eagle House. Further development of the prison facilities is ongoing and responsive to the needs of the prison community - both inmates and staff.
118. In the Falkland Islands since the Police Ordinance entered into operation on 1 May 2000 six complaints have been made against officers below the rank of inspector. None have been made against senior officers. We have set out in our additional report how those cases were dealt with.

119. Under the Immigration Control Ordinance it is unlawful for a person without a passport to enter Gibraltar. That person is regarded as a prohibited immigrant. If an undocumented person enters Gibraltar the Principal Immigration Officer may consider the individual circumstances and see if further investigation is necessary. The individual may be allowed to enter and remain in Gibraltar subject to certain conditions or they may be detained up to 48 hours. A prohibited immigrant may appeal to the Governor about his status and the Governor's decision is final. The actions of the Principal Immigration Officer are open to inquiry by means of an application to the Supreme Court for judicial review

120. In Montserrat the Government remains committed to the objective of ensuring that the requirements of the Convention are maintained despite the ongoing impact of the 1995 eruption of the volcano, which has left only on third of the island habitable. Montserrat is pleased to report the completion of a prison project that allows for all Montserratians sentenced on Montserrat to serve their sentences on Montserrat. Currently there are no Montserratians serving sentences overseas.

121. New prison rules were introduced in January 2000. These rules regulate the administration and supervision of prisons, the treatment, welfare, discipline and protection of prisoners and the duties and conduct of prison officers. The Legislative Council recently passed the Parole of Prisoners Act 2004. This Act makes provision for the creation of a Parole Board. It also authorises the Parole Board to hear cases of prisoners seeking to be released into the community on licence. The Parole Board is required to make recommendations to the Governor and the Governor may act on such recommendations and issue licences for the release of prisoners. The Prison Rules are currently being amended to ensure consistency and cohesiveness between the Parole of Prisoners Act and the Prison Rules.

122. In the British Virgin Islands, in order to expand its limited legal aid scheme the Government has asked the British Virgin Islands Bar association to investigate and recommend a full legal aid scheme. The Bar Association has the matter under consideration but to date has not yet made any recommendations.

123. I now briefly mention the situation regarding Pitcairn Island on which the Committee has expressed an interest. In February 2003 the Pitcairn Public Prosecutor laid charges against seven men resident on Pitcairn for various serious sexual offences. Following a number of legal challenges, which were mainly jurisdictional in nature, trials of these men took place on Pitcairn between 29 September and 29 October 2004. The trials were heard before the Pitcairn Supreme Court with judges sitting alone. The jurisdictional challenges have now been appealed to the Privy Council in London for consideration.

124. Six of the defendants have been convicted. Of these 4 have received custodial sentences. The convictions have not however been formally entered, pending the outcome of other legal issues to be decided by the Supreme Court. The defendants are currently on bail pending the next hearing of the Supreme Court, scheduled for early December.

125. To allow custodial sentences to be served on the island, a prison facility has been constructed on Pitcairn. This will allow any inmates to remain close to their families. Officers from the New Zealand Department of Corrections will staff the prison. The British Government has provided social workers from New Zealand and police officers from the UK for Pitcairn.

126. That concludes this necessarily brief overview of how obligations under the Convention are being fulfilled in the UK Overseas Territories. We will be very happy to give further information to the Committee on any of the issues raised or any other matters relating to the Overseas Territories.

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127. [Thank you Audrey.] Once again, I would like to thank the Committee for this opportunity to present the UK's position with regard to the Convention. We will be very happy to expand on what we have said already and provide you with more information. We are very interested to hear your views and your advice.

