

**UNCAT Hearing: Provisions of lists of issues to state parties**

**[Jonathan Spencer]:** Thank you Mr Chairman.

Before starting this second session, I would like, on behalf of the entire delegation, to express my thanks to you, Mr Chairman, for your kind words yesterday about the murder of Margaret Hassan in Iraq. I did not respond yesterday, because we were still awaiting confirmation that this had actually occurred. But, now that we have had such confirmation, we would associate ourselves fully with your remarks, and emphasise the continuing resolve of the UK Government to establish a civil, democratic and stable society in that troubled country.

Mr Chairman, we had a most enlivening exchange with the Committee yesterday, and are looking forward to our further discussion with you now. Members of the Committee asked us no fewer than 75 separate questions yesterday morning, responses to the vast majority of which we are able to give you this afternoon. In what follows, we shall address ourselves in greatest depth to the areas which we perceive to be of most interest to the Committee, but the written note which we will also provide – a copy of which has already been given to the interpreters – provides fuller answers in the remaining areas. In a very few cases, where the question was, for example, concerned with technical data, we will need to provide further information to the Committee next week. I trust this will be acceptable to you.

It what follows, we shall extend the range of people who will address you rather more widely than we did yesterday. I will start, if I may, by addressing your questions about the procedure to be adopted at these hearings. Dame Audrey will then address your questions on the ratification of the optional

protocol. Following that, I and Richard Heaton (who is the principal legal adviser at the Department for Constitutional Affairs) will cover the constitutional position in the UK in relation to the Convention Against Torture, and the way it is given effect in UK law.

Then Mark McGuckin, Head of Security Policy and Operations at the Northern Ireland office, will address your questions about Northern Ireland, and Martin Howard will answer the questions on Iraq. We will then turn to domestic affairs, which are mostly the responsibility of the Home Office. Iain Walsh will address asylum issues, Jill Tan will speak on terrorism legislation, and Bob Daw, the Head of the International Section at the Prison Service, will summarise our position on police and prisons (though more detailed answers here are included in the written note). Finally, Dame Audrey will answer the questions you raised about our more general foreign policy, and the use of diplomatic assurances.

**Mr Rasmussen** and **Ms Gaer** both raised the question of the Committee's working methods, the reporting format and in particular the use of the List of Issues.

We were amongst those states that called upon the Committee to adopt this practice, we welcome the Committee's decision to go down this route, and would encourage them to continue to work in this manner. In this and other examinations, the UK has found the List of Issues to be helpful in formulating responses to the Committee, and in helping us to address the information at our disposal to the issues that are of greatest current concern. When used appropriately, the List of Issues also allows time for a detailed exchange of views with the Committee, which we, for our part, greatly value.

That said, we fully understand the concern raised by Committee members Mavrommatis and Rasmussen about the status of the written reply to the list of issues. In this regard, the Committee might wish to give some consideration to encouraging States Parties to share their responses to the list of issues with members of civil society – as we ourselves have done. Where this is not possible, there is a risk that the examination process can lack transparency for members to civil society.

The Committee might also wish to consider whether it would rather states read out their response verbatim or give a summary, as to some extent we are trying to do this afternoon, in order to allow time for further dialogue.

#### Rights of Communication

The first and most important redress available to any victim of torture in the United Kingdom is under domestic UK law. Torture is a crime, and it is a private cause of action as well.

I explained yesterday that the United Kingdom government wishes to test the practical implications of providing an additional right of communication to the United Nations, and that CEDAW would be our first experiment on individual petition. **Mr Mavrommatis** pressed us on this – very courteously, I should add – and asked why we were being so cautious. Just two very brief comments on that. The first is that the measure against which we will be assessing the CEDAW experiment is what benefit it delivers to UK citizens. The second is to ask the Committee to note that we have made some movement in the direction of individual petition since our last examination. And I hope you will give us some credit for that!

**[Dame Audrey Glover:]** Thank you Jonathan. I welcome the opportunity to respond to the committee's additional questions. I will be responding on questions relating initially to the Optional Protocol and latterly to foreign policy issues more widely.

### OPCAT: National Preventative Mechanisms

I will answer all the questions relating to the Optional Protocol together.

Thank you for your kind words about the UK's ratification of the Optional Protocol.

The UK believes it is important that the Optional Protocol enters into force early. We are concerned that only five of the 20 ratifications needed for entry into force have taken place. For that reason, on 26 June 2004 the Foreign Secretary launched a world-wide lobbying campaign encouraging other countries to join the UK in signing and ratifying it.

You expressed interest in learning more about the UK's ratification of the Optional Protocol.

We do not propose to establish any new domestic national preventative body, as the UK already has a number of such bodies in place, including HM Inspectorate of Prisons. Article 3 provides that, as an alternative to setting up one or several bodies, States Parties may designate or maintain existing bodies as their national preventative mechanisms and this is the approach we have adopted.

Prior to the UK's ratification of the Optional Protocol the UK Government prepared a list of independent bodies with the remit of monitoring conditions

in places of detention that were in place in the UK. Government departments have confirmed that they believe that in their areas of responsibility they were already covered by the independent bodies included in this list and that therefore the national preventative mechanisms were already in place.

Strictly speaking under the Optional Protocol these designated bodies do not have to start their monitoring activities until a year after the Optional Protocol comes into force. By designating existing independent bodies, we have in fact been able to give effect to this obligation long before being required to do so under the Optional Protocol.

The UK is committed to ensure that the framework of national mechanisms fully meets the requirements of the Optional Protocol and we will review the list of bodies comprising our national mechanisms before the Optional Protocol comes into force.

The Northern Ireland Human Rights Commission is not currently designated but we will consider it in the review of the list of our national mechanisms.

Article 14 of the Optional Protocol requires the Sub-Committee to be given certain powers and access. The European Committee for the Prevention of Torture, who visit the UK on a regular basis, already has those powers. No extra powers will therefore be needed to be given to the UN body.

All the listed bodies comprising our national preventative mechanisms have the same powers, as defined in Article 20, as the Sub-Committee to enable them to undertake their mandate effectively.

Our colleagues in the Northern Ireland Office will deal with the questions relating specifically to the Northern Ireland Human Rights Commission.

### Implementation of the Convention

**[Jonathan Spencer]**: I would like to deal with a series of important issues and questions raised by distinguished members of the Committee. The series concerns the way in which the United Kingdom has implemented the Convention.

I will start by taking a number of questions together, and – if you will allow me – by paraphrasing these in the interests of simplicity. We were asked:

- Are the provisions of the Criminal Justice Act 1988 deficient in their coverage?
- In particular, does the defence of “lawful authority” in section 134(4) license torture by those who can claim to be following superior orders? We were asked this, in particular, by **Ms Gaer** and by **Mr Mavrommatis**.
- Why is there no equivalent for CAT of the Human Rights Act 1988? Again, this was raised by **Ms Gaer**, and by **Mr Mavrommatis**.
- Does UK law adequately give effect to Article 15 of CAT? This was raised by **Ms Gaer**, by the **Chair**, by **Mr El Masry**, and by **Mr Mavrommatis**.

Much of the UK’s position on these questions is set out in our written response, and in what Jonathan Spencer told the Committee yesterday morning. I will try not to be too repetitive. But there are some points I would like to emphasise, and others that we can develop further.

First of all, as the Committee clearly by its questions appreciates, the UK has a dualist system. That is to say, international law does not of itself become

part of the domestic legal order unless the British Parliament passes a law to that effect.

But it is a misconception to assume that the UK always needs to pass such a law in order to fulfil our obligations under international law. Before we ratify a treaty, it is the government's task to make sure that our domestic law, which is a mixture of common law and statute, is consistent with our international obligations. Sometimes, no action is required. For example, much of the content of the Convention Against Racial Discrimination (CERD) and of the Convention on the Abolition of All Forms of Discrimination Against Women (CEDAW) was and is already present in British law. Those treaties have no statutes specifically bringing them into domestic law – no “bridging” statute; none was necessary.

Likewise, the European Convention on Human Rights. For 40 years, the United Kingdom successfully implemented the Convention without any bridging statute. The guarantee of a fair trial under Article 6, for example, was by and large contained in common law. The right to peaceful enjoyment of property contained in Article 1 of the First Protocol was recognised by ordinary legal principles in each of the jurisdictions within the UK. And the right not to be tortured in Article 3 was mirrored by our common law's utter abhorrence of torture and by Parliamentary law (statute law) on the subject going back over three centuries as I explained in my opening remarks yesterday.

Of course, there were occasions during those 40 years on which the European Court in Strasbourg found against the UK, for example where our understanding of what the Convention required was at variance with the Court's. But that did not mean that we were failing systematically to implement the Convention. And the point of the Human Rights Act 1998 was

not to achieve compliance with the Convention. As I have said, we were already complying; neither the Convention nor the Court in Strasbourg required the United Kingdom to pass that Act.

The Human Rights Act 1998 was in fact passed for a different reason – to allow UK citizens to bring cases to vindicate their Convention rights in our own courts, rather than having to go to Strasbourg. We called it: “Bringing Rights Home”. More, importantly, its formal title describes it not as an Act to give effect to the Convention, but as an Act “to give further effect to the Convention.” Passing the Act was a political step, about creating access to justice, rather than one required of us by international law. So, “Incorporation” of a treaty into domestic law is a misleading label. We do not “incorporate” treaties, and we did not “incorporate” the ECHR.

I apologise – but only a little bit - for that lengthy discussion, but I thought it would be helpful to explain our general approach to the questions of implementation and incorporation – which, the Committee will understand, are not exactly the same thing.

That brings us to the Convention Against Torture. Here, as for other treaties, we did not ratify until we had satisfied ourselves that our domestic law was consistent with the Convention. As the Committee knows, we passed section 134 of the Criminal Justice Act 1988 in order to create an offence of sufficiently wide jurisdiction to implement Articles 4 and 5. In other respects, we simply accepted the obligations placed by the Convention on the United Kingdom government – which is why no statute is necessary, for example, to give effect to Article 3, or Article 12.

Our approach is similar to that adopted by a number of other common law countries with a dualist system like ours. Like us, they have given effect to

the Convention by relying on a variety of common law and statutory provisions.

Before I move on, can I make two comments regarding the contrast said to exist between the Human Rights Act on the one hand and the lack of an equivalent for CAT on the other hand? The first is simply to repeat that no such “bridging” statute is necessary to give effect to our obligations under the CAT. And second, we would point out that giving people access to our domestic courts (which, as I have said, was the purpose of the Human Rights Act) is already achieved in both our domestic criminal and our domestic civil law. Torture is a crime. It is also a cause of action.

#### The Criminal Justice Act 1988

**[Richard Heaton]:** I would like to turn now to section 134(4) of our Criminal Justice Act 1988, and is what is said to be our failure properly to implement Article 2. First, may I respectfully agree with the observation made by **Mr Mavrommatis**? This issue has been before the Committee before – indeed, since 1998. We thought that we had explained our position to the Committee’s satisfaction. But if we failed to do so, may I apologise and say that we welcome the opportunity to try again.

The offence in the 1998 Act is cast widely. It covers anyone who intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties. That goes wider than the definition of “torture” in Article 1 of the Convention. For example, the Convention was clearly not intended to cover the pain lawfully caused by the proper conduct of a medical surgeon. Nor was it intended to cover the mental suffering that might accompany a proper sentence of imprisonment – indeed, Article 1

specifically excludes “pain or suffering arising from, inherent in or incidental to lawful sanctions”.

So section 134 of the 1988 Act provides a defence for a person charged with an offence of torture to prove that he had lawful authority, justification or excuse. That means that the surgeon I mentioned, or the prison governor administering ordinary imprisonment, is not criminalised for their proper and lawful conduct.

I want to correct two things that have been said about this defence.

First, it is said that the defence benefits people who have acted in abuse of power – that it lets torturers get off by pleading that they were obeying superior orders. That is simply not the case. A defence using words like “lawful authority, justification or excuse” is quite common in UK law. It means much more than “permission given by someone in authority”. The word “lawful” carries great weight. It requires the authority or excuse to be in accordance with law; to have the quality of law. Abuse of power, by a torturer or by his boss, could never achieve that standard. No court in the United Kingdom would tolerate such a plea.

It is also a principle of UK law that an international treaty can be examined in British courts to assist in the interpretation of any Act of Parliament whose purpose was to give effect to the treaty. So a court faced with this question would turn to the Convention itself; and the Convention makes it quite clear that a defence of “superior orders” cannot possibly justify torture. Finally, if there were any ambiguity in section 134, the Human Rights Act would require the provision to be read in accordance with Article 3 of the ECHR. But we do not need to use the Human Rights Act. There is no ambiguity in the statute.

In response to the specific question from **Ms Gaer**, I am happy to confirm that none of the 17 cases in Iraq referred to by Martin Howard yesterday were dismissed on any such grounds.

It follows that the United Kingdom takes issue with the submissions you have received from Redress on this point. The analysis of the defence that I have given is the one given to Parliament when the point was raised before the 1988 Act became law, and ever since. We would respectfully submit that this is not a point that need detain the Committee any further.

I can deal with the second misconception about this defence rather more briefly. It is said that by referring to lawful authority, justification or excuse under foreign law in section 134(5)(b)(iii), the 1988 Act allows torturers working in a foreign country to escape liability. Again, that is not the case. The defence refers to UK law when it applies to a British official acting under the law of the United Kingdom. It refers to foreign law when it applies to anyone else. I can explain that by taking the Committee back to the surgeon and the prison governor for whom the defence is designed. If their duties are carried out under a foreign legal system, a defence referring to UK law will not technically work. That is why the defence needs to be in terms of the law of the place where they are acting. It is no more than a technical point.

Once again, the person must prove the defence to the satisfaction of a British court. It will not be enough to plead – or even to prove – that a torturer was following “superior orders”. He or she will need to demonstrate that the foreign legal system itself permitted torture. I am sure the Committee’s experience mirrors our own: even in the most notorious cases, torture is sanctioned not by law but rather by lawlessness, by abuse of power, and by corruption. In none of these cases would a defence under section 134 succeed.

## Article 15

Turning to Article 15, distinguished members of the Committee also raised the question of Article 15 and the recent judgment of the Court of Appeal in *A and others v Secretary of State*.

The starting point is that UK law contains extensive safeguards in relation to evidence obtained by torture. Those safeguards are found in the common law; they flow from the Human Rights Act; and they are contained in statute. Evidence obtained as a result of any acts of torture by British officials, or with which British authorities were complicit, would not be admissible in criminal or civil proceedings in the UK. It does not matter whether the evidence was obtained here or abroad. This was expressly confirmed by the Court of Appeal in the case I have just mentioned.

In addition, statute and common law provide for the exclusion or strict control of hearsay evidence in criminal proceedings, and for evidence to be excluded where its use would be unfair. And the Courts will have regard to the UK's international obligations, including under this Convention, in exercising these powers.

And I would go further. It is hard to imagine circumstances in which evidence proved to have been obtained through torture could possibly make its way into proceedings (other than as evidence of the fact of torture in a case against an alleged torturer). Indeed there is no recorded example in the modern era of a British court taking any account of evidence that had been established to be the product of torture.

There has been a great deal of speculation about the cases put before SIAC and whether they relied on material from other countries that may have been obtained using torture. SIAC emphatically rejected any suggestion that any evidence relied upon by the Secretary of State was or even may have been obtained by torture – or indeed by any inhuman or degrading treatment. And SIAC’s view on this was confirmed by the Court of Appeal.

It is important to be clear that it is not the Home Secretary’s intention to rely on, or present to SIAC, evidence where there is knowledge or belief that torture has taken place.

But it is also important to understand the context in which this issue arises. It arises in relation to those certified under the Anti-Terrorism, Crime and Security Act. In the light of the events of 11 September and the public emergency threatening the life of the nation, the Secretary of State has an onerous obligation. In considering whether to certify an individual as a suspected international terrorist whose presence in the UK is a threat to national security, the Secretary of State must assess a wealth of information from a variety of sources. Its precise origins will often be obscure. Intelligence sources are often opaque and there may be no accurate way of clarifying the circumstances in which some information was obtained. So the Secretary of State’s task is difficult and it is burdensome. It is part of his wider duty to protect national security and public safety.

In this context, SIAC is one of a number of practical, administrative and legal safeguards providing for detailed scrutiny and review of the Secretary of State’s decision. In order to be able to scrutinise fully and effectively the Secretary of State’s decision, SIAC must be able to consider all the material available to the Secretary of State.

I should say that we are grateful to the members of the Committee for raising what is clearly a difficult issue facing not only the UK but all states. It is not an issue which has come before the domestic courts before. Nor, so far as we know, has the issue come before any other national or international court in any similar circumstances.

Finally on this, the Committee will be aware that a petition for permission to appeal is presently before the House of Lords, the highest court in the UK. As members of the Committee will appreciate, that makes further speculation on my part difficult. Like you, we await with keen interest the outcome of the petition and of any subsequent appeal. If it would assist the Committee, we would be happy to supply copies of any judgement as and when it becomes available.

Mr Chairman a number of other implementation issues were raised by the Committee, particularly **Ms Gaer**, by yourself and **Mr Grossman**. These are fully answered in our written comments, but in the interest of brevity I shall not read them out now unless you ask me to do so.

#### Other Implementation Issues

I would like to turn to a number of other questions raised about our implementation of the Convention. **Ms Gaer** asked, by reference to the McKerr case, whether the 1988 Act is retrospective. I can confirm that it is not retrospective. That is the general position for both UK law and, as we understand it, for international obligations as well.

**Mr Grossman** asked whether any cases have been brought by British nationals who claim to have been tortured abroad. There is, as it happens, one such case that is being contested in the British courts at

present. It is a civil case brought by three British citizens and a Canadian against officers of a foreign government and against the State itself.

I should immediately say that the allegations have not been proved; legal hearings thus far have been on the question of whether State Immunity applies and not on whether the alleged acts took place. The Court of Appeal found last month that while State Immunity barred the action against the State itself, there was no blanket immunity for State officials. I hope this also answers the question from **Ms Gaer** about the application of State Immunity in civil cases.

These arguments may well be considered again in the House of Lords, our highest court, so I will not dwell on them. But before I move on, the Committee may observe that the cause of action in this case – based on the ordinary English torts of assault and battery – is readily available to the claimants at common law, and does not require special statutory provision. This is a point I made earlier in discussing our method of implementing the Convention.

**The Chair** quoted a passage from Lord Justice Laws, which raised the possibility of Parliament passing a law that conflicted with the Convention. How could this be so, the Chair asked (I paraphrase). The answer is that in our legal system – and the Committee will understand that the UK is far from alone in this – Parliament is indeed sovereign. In theory, it can pass any law, including one that is at odds with international law. But the obligation and commitment of Her Majesty's Government under international law, is to ensure that this does not happen. We submit ourselves to examinations such as this one in the confidence and expectation that our law is compliant. And

we count on the process of support, dialogue and challenge with distinguished committees such as this one, and with the NGO community, to ensure that our law is regularly and thoroughly scrutinised.

**The Chair** went on to ask how our system is consistent with the idea that torture is a breach of *jus cogens*. We certainly accept that torture has that status in international law, and the *Pinochet* case demonstrates that our courts recognise it too. I would respond to the Chair's question by explaining that the UK constitution contains a number of important principles. One is the rule of law, and a respect for international law; and another is Parliamentary sovereignty. They may appear to be in tension; but in fact they exist alongside each other and complement each other.

**Ms Gaer** asked why there was no systematic collection of statistics of torture cases brought under the Human Rights Act. The answer lies in the nature of that Act. For the most part, it does not create a set of new rights, or new causes of action. Under section 7 of the Act, citizens can rely on the rights guaranteed by the Human Rights Act in any proceedings. For example, they can use the rights as a defence to a criminal charge, or to strengthen a damages claim against a public authority, or in an employment tribunal, or in a defamation action, or in a public law case brought against a government minister. Sometimes the case is obviously a "human rights" case. But sometimes (and the case involving the foreign government that I mentioned earlier is a good example), the case carries no particular "human rights" or "torture" label at all. For that reason, we have found it difficult to categorise or count "human rights" cases. But we track fairly closely the sorts of cases

being brought in the courts. And where the government is involved as a party, we obviously have a much closer knowledge. The cases described in our written reply to the list of issues are representative of those domestic cases brought with the help of the Human Rights Act that rely on Article 3. ]

## **NORTHERN IRELAND**

### Northern Ireland Human Rights Commission

**[Mark McGuckin]: Ms Gaer and the Chair** asked questions around the alleged denial of access of the Northern Ireland Human Rights Commission to Rathgael Juvenile Justice Centre and Maghaberry Women's Prison (which has since been relocated to Hydebank Wood) and the powers of the Northern Ireland Human Rights Commission.

Firstly, I would like to address the comments about access for the NIHRC to various penal establishments in Northern Ireland. The NIHRC conducted an intense and focused review of Mourne House Women's Prison in the first half of 2004. In their report they commented that "access granted by the Prison Service to the researchers was excellent". Mourne House was closed in June 2004, and the women prisoners were moved to Hydebank Wood. The NIHRC have asked for their researchers to have access to the new facilities. However, in light of the significant disruption that has already taken place, and other periodic inspections which are due, the Prison Service have asked the NIHRC to put off any visit of this sort until next Spring. The Commission has decided to interpret this as the Prison Service denying them access to Hydebank Wood. This is not the case. The Chief Commissioner of the NIHRC has been invited to visit Hydebank Wood and has so far not availed of this offer. In addition, the Council of Europe Commissioner for Human

Rights visited Hydebank Wood on 9 November and the Criminal Justice Inspector for NI is expected to carry out an inspection before Christmas and publish a report.

NIHRC have also conducted an investigation into juvenile justice centres and their report was published in March 2002. The Commission sought access to the (now single) Juvenile Justice Centre in January 2004 to investigate the extent of progress against their recommendations.

Since the original investigation, the regulatory framework has changed significantly. A Chief Inspector of Criminal Justice and a Commissioner for Children with extensive powers of inspection and review have been appointed. There is a danger that if each of these bodies were to act unilaterally, the burden of scrutiny on the Centre would be oppressive.

As the Chief Inspector planned to carry out a full inspection of the Centre in October 2004 it was suggested to the NIHRC that, as they had no immediate concerns about human rights issues in the Centre, the two exercises should be co-ordinated. The Commission regarded this as a refusal to grant access and have sought a judicial review of our position. However, we are pleased to note that, in line with our suggestion of greater collaboration, an Investigations Officer from the Commission joined the Chief Inspector's team for the inspection which has now taken place. We look forward to receipt of their report.

As these two examples illustrate, the NIHRC does not exist in a vacuum. Northern Ireland has a uniquely strong set of oversight and investigatory organisations which exist to ensure that rights are protected. We have to ensure that these organisations are allowed to function without duplication or

confusion and in a way that doesn't unnecessarily burden the public authorities they are charged to oversee.

The duties and powers of the Commission need to be complementary to other investigatory bodies (and the many others involved in protecting and promoting human rights) to avoid duplication if the system is to work effectively and to the benefit of the people of Northern Ireland. The British Government recognises that the Human Rights Commission has much expertise to offer these organisations and welcomes the sharing of that expertise.

As I hope I have shown, the powers of the Northern Ireland Human Rights Commission involve a complex series of issues which need to be resolved and which the British Government is still considering. Whatever final position we take, we will continue to keep the Commission's powers under review so that the Commission is able to discharge its functions as effectively as possible.

#### Review of Northern Ireland Terrorism Legislation

**Ms Gaer** and **Mr Mavrommatis** asked about the state of emergency in Northern Ireland and the basis on which the British Government considers the continuation of emergency provisions in Northern Ireland. The Government is committed under the Belfast Agreement to the ultimate removal of the temporary Northern Ireland provisions of the Terrorism Act 2000, but only when the security situation allows. Through the current political process the Government is working to achieve the conditions in which these specific provisions are no longer necessary. The British Government remains determined, as the Prime Minister has said that matters should not be allowed to drift.

That is not to say that in the interim we do not keep all aspects of the counter-terrorist framework under review. The Northern Ireland specific legislation has to be renewed annually following a debate in both Houses of Parliament. All the provisions are reviewed and where we assess that they can be lapsed we do so. However, we must retain a counter terrorist framework which is capable of meeting the nature and level of threat as assessed by the Secretary of State's principal security advisor the Chief Constable of the Police Service of NI. It is true that levels of violence have decreased in recent years. The UK Government welcomes this. Unfortunately some terrorist groups are still active in Northern Ireland and still retain the capacity and intent to initiate serious widespread violence and loss of life. That they have not been as successful as they would wish to be is only as a result of effective counter terrorist activity by the police. Consequently, although the Government is committed to removal of Northern Ireland specific counter-terrorist provisions, the current framework is necessary to counter the assessed threat. We continue to keep it under review.

### Baton Rounds

**Mr Grossman** referred to a statement made by the then Security Minister for Northern Ireland, Jane Kennedy, in November 2003 and asked about progress on the removal of baton rounds from use in Northern Ireland. In her statement, Jane Kennedy said that, on the basis that an acceptable and effective and less lethal alternative is available, the baton round would no longer be used after the end of 2004.

First of all I am very pleased to be able to report to the Committee that no baton rounds have been fired by the police or the army in Northern Ireland

since September 2002, that is for over 2 years. However, we are not yet in a position to remove from the police the option of using baton rounds.

Much has happened that is very positive since Jane Kennedy's statement in November 2003. In summary:

- the UK-Wide Steering Group published its fourth report on 29 January 2004;
- a public conference was held in London on 5 February, attended by a wide range of NGOs, on the issue of the United Nations Basic Principles on the use of force and firearms;
- Since spring 2004, 6 water cannon have been available to PSNI.

On 29 January 2004, the Northern Ireland Office-led Steering Group published the fourth report of the research programme into alternative policing approaches towards the management of conflict. The report noted that it remained the case that there were no commercially available technologies that met criteria set out in the Patten report as suitable alternatives to the current baton round. However, development of an alternative is now at an advanced stage and, subject to final testing and independent medical evaluation, should be available for use by summer 2005.

## **UK ARMED FORCES OPERATIONS IN IRAQ AND AFGHANISTAN**

### **Jurisdiction and the applicability of the UNCAT and EHCHR**

**[Martin Howard]:** Several Committee members asked questions about the jurisdictional framework in which the UK Armed Forces operate abroad. The UK Armed Forces and – in answer to **Ms Gaer** – military advisers and other UK public servants who are deployed with them on operations, are subject at all times to English criminal Law. This is the case for conflict and peace-keeping operations and is independent of which national or international body has authorised operations. The UK Armed Forces are also subject to local laws although in many cases there are status of forces arrangements in place which provide immunity to UK troops from local criminal or civil process. This is the case in both Iraq and Afghanistan.

Our definitive view of the applicability of the Convention to our operations in Iraq and Afghanistan is stated in paragraph 213 of our written response. In essence the United Kingdom believes that those parts of the Convention which are applicable only in respect of territory under the jurisdiction of the state party cannot be applicable in relation to actions of the UK in Afghanistan or Iraq.

**Ms Gaer** asked about the obligations of private contractors. I think there are two scenarios here. The first is where private contractors are operating in a country independent of the UK Armed Forces. In such circumstances contractors are subject to the domestic law of the country in which they are working. Their conduct might also be liable to prosecution under the provisions of the UK Criminal Justice Act if they commit acts of torture at the instigation of a public official because this provision applies to a person regardless of their nationality and regardless of where in the world they

commit the act. The second scenario is one where private contractors are engaged by the UK Armed Forces on operations abroad. In such circumstances contractors would be subject to the same legal framework as the UK Armed Forces operating in that country.

As the Committee knows the UK Government does not believe that the European Convention on Human Rights is applicable to our operations in Iraq. We are awaiting a High Court judgment on this issue and, as **the Chair**, pointed out yesterday, the Bankovic judgment is key to our argument. I dealt with why we did not believe it right that the ECHR should apply to our operations in my opening comments yesterday, but for the record I should stress again that our Armed Forces do not operate in a legal vacuum. Where there is evidence of any wrongdoing on the part of the UK Armed Forces we investigate and as necessary prosecute.

### **Training**

**Mr El Masry** asked about what measures were in place to ensure compliance with the Convention. This is set out in paragraphs 210-211 of our written response. In summary, the UK's legal obligations inform all training and operating procedures. I do not suggest that individual soldiers are aware of individual articles in the Convention and other relevant instruments. We do not, for example – as I think one committee member suggested – specifically train interrogators on the application of Article 3. Rather we ensure that individuals are trained appropriately to perform their various functions in accordance with all the relevant legal requirements. And those who need it have access to legal advice.

### **Detainees**

Turning to detentions, I can confirm that UK detention facilities in Iraq and Afghanistan are open to international inspection: the ICRC continue to have full and unfettered access to our facilities.

**The Chair** raised the transfer of detainees to Iraq and Afghanistan authorities. I can only restate what we said in our written submission and in my remarks yesterday. In both circumstances we do not believe that Article 3 of the Convention is applicable to the transfer of criminal suspects from UK physical custody in Iraq or Afghanistan to the physical custody of either the Iraqi or Afghan authorities, because the individuals in question are subject to the jurisdiction of either Iraq or Afghanistan throughout. There is therefore no question of extradition or expulsion.

But I repeat that you should not conclude from this that we are not concerned about prisoner treatment in Iraq or Afghanistan. As I said yesterday, we have negotiated an MOU with the Iraqi Ministries of Justice and Interior which provides that detainees whom we hand to the Iraqi authorities be humanely treated and not tortured.

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

**Mr El Masry** raised questions about the transfer of detainees to the US. Although we transferred internees or Prisoners of War to US custody for a period, the UK retained responsibility for them as the detaining power in

accordance with the Geneva Conventions. As I said yesterday, we have an MOU with the US, which confirms that the UK remains the detaining power.

### **Interrogations**

Both **Ms Gaer** and **Mr Mavrommatis** raised the issue of British involvement in US interrogations. I can assure the Committee, that all interviews conducted by UK intelligence personnel, with one exception to which I will turn in a moment, were conducted in a manner consistent with the Geneva Conventions and with the agreement of the detainee. Where UK personnel are taking part in interviews they are instructed to report if they believe detainees are being treated in an inhumane way.

In its annual report, the UK Intelligence and Security Committee (ISC), which has Parliamentary oversight of the Intelligence Agencies, noted one exception to the above of a detainee who was brought in hooded and shackled by the US military. The UK official understood that the measure was necessary for security reasons and not part of a form of duress for interrogation purposes. The ISC is continuing to take evidence on these matters with the full cooperation of the UK Government and will report in due course.

Additionally, **Ms Gaer** made references to the integrated command structure at the Coalition Provisional Authority and reports of US personnel at least nominally reporting to a British officer. I think this is probably a reference to allegations which have appeared in the media that a UK officer embedded in the Combined Joint Task Force HQ in Baghdad either had some responsibility for Abu Ghraib, or knew about allegations concerning Abu Ghraib.

I repeat what we have said publicly many times about this case. The officer in question was never in a position of command over Abu Ghraib nor did he have any responsibility for any aspect of it. Neither he nor any other UK personnel working in Baghdad had knowledge of the specific allegations until the US announced that an investigation was underway. Furthermore, no UK personnel were based at Abu Ghraib until January 2004, well after the incidents which are subject to US investigation and judicial procedures.

### **Compensation in Iraq**

**Mr Grossman** asked about our compensation arrangements in Iraq. When compensation claims, including those relating to alleged mistreatment, are received they are considered on the basis of whether or not the UK Ministry of Defence has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid.

We believe the procedures for handling claims for compensation are straightforward and have been tested in other theatres of operation.

The Area Claims Officer (ACO) based at Basra is well known to the local civic authorities, as well as the regional courts and Iraqi Police authorities who regularly direct claimants to the ACO. Up to 25 claimants a week visit the ACO to register new claims, seek updates on ongoing cases, collect compensation payments or come to discuss decisions made relating to their claim.

With the exception of death and serious injury cases that are handled in the UK, the ACO handles claims for compensation from Iraqis in theatre to speed up the process and enable local communication.

To date about 100 claims are being handled in UK. 10 of these relate to alleged mistreatment, and are being investigated. The remainder all relate to death or serious injury. Although we seek to settle claims administratively and efficiently, Iraqis have recourse to the English courts a point touched upon by **Mr El Masry**.

### **Allegations of mistreatment**

In drawing my comments on Iraq and Afghanistan to a close, I want to say something about the specific allegations that Committee members raised yesterday. In particular two cases were raised which, as I said yesterday, are being fully investigated. I am afraid I am unable to give the details of these cases to the Committee while the investigative and judicial process is underway. Ensuring that alleged incidents of mistreatment are investigated and as necessary appropriately prosecuted is part of our duty under this Convention and it would be quite wrong to undermine that process. This issue was discussed with Amnesty International on 14 October at one of our regular Ministers' meetings with them.

If the Committee wishes to consider the cases that go to Court, then it will be at liberty to do so once the judicial process is completed. UK courts-martial are public fora like civil trials and the details of any courts-martial will be available for the Committee to consider in due course. Our processes are not – as has been claimed - “shrouded in secrecy”.

I should also reiterate what I said yesterday. There is no pattern which would suggest that the UK Armed Forces have been involved in systematic human rights abuse and we therefore have no plans for an independent inquiry. We have every confidence in the military police and judicial system. Our military police and legal authorities work to civilian standards, but, particularly in the

case of the police, require military skills and capabilities to operate effectively in an environment like Iraq.

**Mr El Masry** and **Mr Grossman** raised allegations contained in reports from Amnesty International. The Committee may be aware that we published a detailed response to Amnesty this summer which set out our response to all of the allegations and recommendations Amnesty had put to us in four reports about Iraq, as they apply to the UK Armed Forces. I would be more than happy to make a copy of that response available to the Committee today.

### **Suicide and Self-harm in the UK Armed Forces**

Finally, I turn to the issue raised by **Ms Gaer**, namely that of the incidence of suicide and self-harm in the UK Armed Forces and concerns about bullying. We are committed to reducing the incidence of self-harm in the Army. The incidence of suicides within the three Services is actually lower than in the UK general population. Males under 20 in the Army are an exception to this rule but in absolute terms the number of deaths in this range are thankfully small (27 deaths over a 10-year period against an equivalent civilian cohort of 18).

The Army has initiated work to update the guidance and procedures on the prevention and management of suicide and deliberate self-harm and this has been shared with the Royal Navy and the Royal Air Force. This work covers prevention, screening, reporting, data collection, training and education.

Commanders, at all levels, play an important role in getting to know their people sufficiently well to identify any danger signs, and awareness training is mandatory on a range of courses, including those for Unit Welfare Officers.

A confidential telephone support line was established in December 1997 that provides a fully trained, confidential, independent and non-judgmental listening and support service to Army personnel and their families. This service was extended last year to cover the Royal Navy and the Royal Marines.

**Ms Gaer** particularly mentioned incidents at Deepcut Barracks. As the Committee will be aware there have been calls for a public inquiry, but it is the case that full investigations – including investigations by Surrey Police – have already taken place. We have learned much from the outcome of these investigations and it is far from clear what more a public inquiry might achieve.

That concludes my comments.

## **ASYLUM**

List of safe countries: process of considering claims, application of Torture Convention, position of vulnerable groups (Questions from Ms Gaer, the Chair and Mr Grossman)

**[Iain Walsh]:** No one seeking protection in the United Kingdom will be removed if this would be a breach of our obligations under the Refugee Convention, the European Convention on Human Rights or the Torture Convention. This applies both where we are considering removing a person to their country of origin or considering a person's removal to a third country which we think is better placed to determine the substantive merits of the claim.

The position in UK law is that a person's removal would be a breach of our obligations under the ECHR where this would expose them to be a real risk of torture or inhuman or degrading treatment or punishment or where this would lead to a flagrant breach of other ECHR rights. The protection offered by the ECHR in the removal context is thus wider than that offered by the Torture Convention so by taking account of the ECHR in all removal cases we ensure that we do not breach our obligations under the Torture Convention Against Torture.

We consider asylum claims on their individual merits. This applies to claims from all applicants, including those from the 14 States currently designated as being generally safe. An asylum claim cannot be refused simply because the applicant is a resident of one of these States. A detailed interview focusing on the individual nature of the claim is undertaken in all cases and a decision taken on the basis of the information obtained. It is possible for such a claimant to be granted leave, to have their claim refused but to receive an in country right of appeal or to have their claim refused and have only an out of country appeal right.

We have additional safeguards in place in respect of asylum claims made by residents of designated States. In any case where we consider that such an asylum claim is not only unfounded but clearly unfounded it has to be checked by a senior caseworker as well as by the caseworker initially in charge of the claim. Any decision to certify an asylum claim as clearly unfounded such that there is no statutory in country right of appeal must be taken by qualified staff specially trained in how to apply the clearly unfounded test.

A claim is "clearly unfounded" only if on no legitimate view can the claim succeed. A person whose claim has been certified as being clearly

unfounded can seek to challenge that certificate in our courts through a process called judicial review. If they do so they will not be removed until the judicial review proceedings are completed. If a person does not seek to challenge the certificate via judicial review they will be removed from the UK and they will be able to lodge an appeal from outside the country. For claims which are sufficiently without merit to be treated as clearly unfounded the United Kingdom considers it is reasonable that a person should not be able to extend their period in this country pending the determination of an appeal. We believe our high success rate at appeal suggests to us we have the balance right in this area.

I would like to add that we have a policy of not removing unaccompanied children under 18 if they have no family we can trace in their country and no adequate reception and accommodation arrangements exist. This policy applies equally to unaccompanied children seeking asylum from a designated State who would therefore be granted leave in such circumstances even if their asylum claim was refused.

When assessing any asylum claim, including those from residents of designated States, we consider whether any special factors apply which would justify leave being granted either under the Refugee Convention or the European Convention on Human Rights. The fact that a person is vulnerable will not of itself lead to a grant of leave but it will be something we take into account as appropriate.

Mr Chairman, a number of other issues were raised by the Committee, particularly by yourself, **Ms Gaer**, **Mr Grossman** and **Mr Rasmussen**. These are fully answered in the written material, but in the interests of brevity I will not read them out now unless you ask me to do so.

[Criminal offence of being undocumented (Question from the Chair)]

The United Kingdom faces a serious problem in the large number of people arriving claiming to have no documentation. This can make it very difficult to establish the correct identity and nationality of the individual and, should their claim be refused, can make their removal very difficult. The offence contained in section 2 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 was introduced against this background.

We recognise that there will be people – in particular people fleeing a country in which they face persecution – who travel to the United Kingdom either with no passport or with a false passport. The section 2 criminal offence recognises this by providing defences based on these situations. We are not seeking to criminalise those who travelled here having never had a passport or who are open about the fact they travelled on false papers. The behaviour we are targeting is the destruction or disposal of passports during the course of a person's journey to the United Kingdom.

In general we do not consider it acceptable for a person – including an asylum seeker – to dispose of their passports having had them when they left their country. So if a person were asked by an agent to dispose of their passport we would not expect them to do so, a point we are seeking to emphasise in publicity campaigns both at home and abroad. However, we do accept that some people may be sufficiently vulnerable such that it is reasonable to expect them to follow the instructions of their agent to dispose of their passport and in such cases the section 2 criminal offence would not apply. Each case is

considered on its individual merits but we would have regard to the vulnerable position of trafficked women.

We consider that the range of defences built into the offence makes it compatible with Article 31 of the Refugee Convention on illegal entry and presence.

Position of trafficked women (Question from Ms Gaer)

Where a trafficked person claims asylum we will consider the claim on its merits: there is no blanket policy to either grant or refuse claims. If a claim is refused that means we consider that the applicant's removal would not be a breach of our obligations under the Refugee Convention or the ECHR. Unless the claim is certified to be clearly unfounded the applicant will have the opportunity to appeal our decision before they are removed.

If a trafficked person is prepared to help as a witness in the prosecution of a trafficker they will be permitted to stay in the United Kingdom for as long as they are required for that prosecution. Once that is completed there is no automatic assumption that the trafficked woman will be permitted to stay if they do not qualify for leave on any other basis. We are committed to treating women who have been trafficked in a sympathetic and understanding manner and take very seriously the prosecution of the traffickers. However, we do not think it would be right to allow all trafficked women to stay permanently in the United Kingdom as that would risk people pretending to be trafficked when they have not been, which would be of no benefit to those who had genuinely been trafficked.

Similarly, we think that a decision on seeking someone's removal is a matter best determined on an individual basis. We do not think it would be helpful to introduce a blanket reflection period for any person claiming to have been trafficked, as this will again open this area up to abuse. Equally, it would be rare for anyone to be removed within 48 hours and in any case where a delay in seeking removal seemed appropriate we would consider granting some form of reflection period on an individual basis.

Complaints against immigration service staff (Question from Ms Gaer)

The relatively high percentage of complaints against Immigration Service staff recorded as being substantiated is largely explained by many complaints raising a number of allegations and a complaint being recorded as substantiated if just one of them is made out. Most complaints tend to be about such matters as a lack of information being provided, the delay in completing an examination, rudeness, etc. While any shortcomings in these areas are undesirable they are not at the upper level of seriousness and are not matters covered by the Torture Convention. The usual response when an allegation of this nature is made out is to use it as a learning point for the immigration officer. Where several complaints of the same type are upheld against different officers this is likely to lead to more general action being taken to remind officers of the standards to be followed.

It is less common for more serious allegations to be made, such as those of assault. Some have been made in the context of enforced removals, a matter raised by the Medical Foundation amongst others. Allegations of this kind are referred to the police in the first instance in view of their seriousness and are not matters. A much lower

percentage of serious allegations are substantiated than is the case for the total number of allegations.

It is worth noting that the number of allegations made each year – usually between 200 and 300 – is relatively a small figure given the many millions of individuals seen each year by Immigration Service staff. And, as noted, the number of allegations of the more serious kind is much lower than this already small figure.

Complaints made by detainees in Yarl's Wood (Question from Mr Grossman)

Two days ago a report into the incident at Yarl's Wood was published by Stephen Shaw, the Prisons and Probation Ombudsman. There are a number of recommendations made, which we are considering. However, we have already accepted that some of the things that happened in the period immediately following the disturbances were not acceptable and we have apologised for those incidents where detainees were not treated in the way they should have been.

Enforced/escorted removals (Question from Mr Rasmussen)

The great majority of removals do not require escorts other than to the port of removal. For example, in the period April to July 2004 7,557 individuals were removed without an escort compared to 1,174 with an escort. All escorting officers are fully trained in approved methods of control and restraint, including training in the use of handcuffs. The same standards apply as those used by the Prison Service. They also receive training in interpersonal skills, handling difficult situations, de-escalating situations and understanding the anxieties of detainees.

Each removal operation is followed by a debrief and counselling is available for escorting officers should they feel the need for it.

About 25% of escorted removals require force to be used. In all instances where it is used this must be recorded and reports submitted to the Immigration Service contract monitor to examine. Where individuals are returned to a removal centre after a failed removal attempt in which control and restraint has been used a medical examination will always be offered within 24 hours of re-admittance. Where the failed removal attempt did not involve control and restraint it is not considered necessary to conduct a medical examination as a matter of course but it remains open for an individual to ask for one.

#### Deprivation of nationality (Question from the Chair)

The power to deprive a person of his or her nationality is contained in section 40 of the British Nationality Act 1981 as amended by section 4 of the Nationality, Immigration and Asylum Act 2002. The power to deprive on grounds of activity that is seriously prejudicial to the vital interests of the United Kingdom can be used against any British citizen as long as it would not render them stateless. Where a person is deprived of their nationality in these circumstances they would become subject to immigration control and the expectation is that we would seek to remove them if we could do so consistently with our international obligations.]

### **TERRORIST LEGISLATION**

**[Jill Tan]: Ms Gaer** has asked a number of questions that relate to the Anti-Crime, Terrorism and Security Act 2001 the related derogation under the

ICCPR and article 15 of the ECHR. As the committee will be aware these matters are before the House of Lords, in their judicial capacity, but there is some further information that I can provide to assist the Committee.

The subject of derogation is a difficult area but both the ICCPR and the ECHR recognised that there would be circumstances when it would be necessary for signatory states to derogate from certain of provisions when there was a public emergency threatening the life of the nation to the extent that is strictly required by the exigencies of the situation.

No derogation is entered into lightly and the Government reviews the need for the derogation annually before asking Parliament to renew the legislation.

It is for each country to decide how to address the specific threats that they face. Different countries have different legal systems and have followed different approaches.

### State of Emergency

The first are of questions that **Ms Gaer** raised related to State of Emergency and whether it truly existed. The terrorist attacks of 11 September 2001 established a new dimension to the terrorist threat, the infliction of mass casualties by horrific means, by suicide terrorists who struck without warning, without any claim or pretence to be advancing a negotiable cause.

The main threat to the UK and its interests overseas is international, likely to be of long duration, involving groups of people engaged in long term planning, using sophisticated new technology, science and communication available to them, they are skilled in practicing deception and evading surveillance and using multiple stolen or fraudulent identities.

The written response to the issues raised by the Committee provides a further outline of the threat. I will not catalogue further the events that have happened since 11 September. But the threat remains, and this has been confirmed by recent updates.

The very onerous responsibility for national security lies with the Home Secretary. It is for the executive to determine the threat to national security, including the threat posed by international terrorism. The Government recognises the need for independent scrutiny but such scrutiny must not compromise national security.

Prior to the introduction of the ATCS legislation, the Home Secretary made available to Parliament the basis of the intelligence that led him to conclude that a state of public emergency existed. Additionally he briefed senior Parliamentarians (from all parties) on a confidential basis, on the detailed nature of the threat.

Whilst the legislation was introduced in response to a public emergency it does a disservice to Parliament to imply that it had a lower standard of scrutiny. Careful consideration was given to the legislation and a number of safeguards built in the legislation.

The powers must be renewed annually by Parliament which offers the opportunity of further scrutiny and will lapse in November 2006. Each year before seeking to renew the powers, the Home Secretary must satisfy himself that there is a continuing state of emergency threatening the life of the nation and that the ACTS Act powers remain strictly required by the exigencies of the situation are proportionate.

The Home Secretary's decision to seek renewal will be informed by the most up to date assessment of the public emergency and the effectiveness of the Part 4 powers in addressing it. He has already given his assurance that the powers will only remain in place whilst the current public emergency exists.

Apart from Parliamentary scrutiny, extensive material has been placed before the Special Immigration Appeals Commission (SIAC), who found that a state of emergency existed. A position upheld by the Court of Appeal.

**Ms Gear** also referred to the initial findings by SIAC that the measures were discriminatory, which was subsequently overturned by the Court of Appeal.

In reaching their decision the Court of Appeal accepted the Secretary of State's position that it is legitimate for a state to distinguish in the field of immigration control (of which the ATCSA measures form a part) between UK nationals and others.

The measures form part of a broader package, they tackle a specific issue in relation to the presence in the UK of foreign nationals who pose a threat to national security but who cannot, for the time being, be removed. Article 15 requires that derogating measures go no further than the "extent strictly required by the exigencies of the situation", we are clear that our approach is consistent with this and that the measures are a necessary and proportionate response.

It has also been suggested that the fact that only 17 individuals had been detained under the ATCSA powers, placed in doubt whether a state of emergency truly existed. As explained above we have sought only the measures that are strictly required.

The Home Secretary has undertaken to use these powers sparingly – that is what he has done. They have only been used in a small number of cases where prosecution has not been possible and where the individuals cannot, for the time being, be removed from the UK.

**Mr Yakovlev** questioned why we would not prosecute terrorists in their own country. If we are able to prosecute terrorists in this country we will do so. We would also, where appropriate assist other countries in bringing prosecutions. However the question of return individuals to face prosecution is subject to the same considerations in relation to safeguarding individual human rights as those which apply in the case of all removals.

**Ms Gaer** also asked about whether other detainees had asked to leave the country. All those certified and detained under the ATCS Act are free to leave the country at any time and two have chosen to do so. All of those detained have been asked if they wish to leave and if there are any third countries they wish to go to. If they express a desire to leave every effort will be made to assist them.

#### STATUS OF INDEPENDENT REVIEWS

Reference was made to the Newton Report and the status of independent reviews. I think both **Mr Grossman** and **Ms Gaer** asked questions in relation to this. Independent review was one of the safeguards introduced on the face of the legislation. There are two separate independent reviews. These reviews are quite separate from the appeals and reviews of individual cases that are carried out by SIAC (a superior court of record), which I will refer to later.

Turning to independent reviews, the first is by Lord Carlile of Berriew, QC, a respected barrister and judge, (and a member of the opposition parties) is the independent reviewer of the operation of section 21-23 of the ATCS Act. The details of this are set out in our written response to the issues. In essence Lord Carlile must review the operation of these sections of the Act not later than one month before the expiry of the legislation – ie before annual renewal. He must submit his report to the Secretary of State and the Secretary of State must then lay the report before Parliament. Whilst the legislation says this should be as soon as is practicable – both parties ensure that the report is completed and placed before Parliament ahead of the annual renewal debates. This enables both Houses of Parliament to take full account of the report ahead of the annual renewal debates.

The second independent review covers the whole of the ATCS Act. The provisions are set out in s122-123 of the Act. A committee of Privy Counsellors<sup>1</sup> chaired by Lord Newton, a former Conservative Cabinet Minister, was appointed to conduct a review of the whole of the Act. Their report “Anti-terrorism, Crime and Security Act 2001 Review: Report HC 100” was published in December 2003. Section 123 of the ATCS Act gives the committee the power to specify any provision of the Act which will cease to have effect 6 months after their report is laid before Parliament unless “a motion has been made in each House of Parliament considering the report”. This provision ensures that the ATCS Act is made subject to periodic Parliamentary review and renewal. The committee specified the whole of the Act for the purposes of section 123 in their 2003 report and the Act was debated in both Houses of Parliament (25 February and 4 March 2004). This afforded Parliament the further opportunity, ahead of the separate annual

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<sup>1</sup> Senior Political figures in public life who can contribute to the administration of the country in a way that transcends party politics.

renewal debates, to debate all of the recommendations in the report, including some of the suggested alternatives to the part 4 powers.

Apart from the independent reviews for which provision is made on the face of the Act, Parliament also has the benefit of the reports published by the Parliamentary Joint Committee on Human Rights. This Committee has published reports commenting on various aspects of the Part 4 powers.

In considering renewal of these powers Parliament will be mindful of the reports of the various committees and independent reviews as I have said, the Newton Report was debated by both Houses of Parliament in February and March – prior to the annual renewal debates.

The Newton Committee in their report recommended that the part 4 powers should be replaced with new legislation that dealt with all terrorism whatever their nationality and without the need for derogation. The suggestions made in the Newton report were given careful consideration by the Government and a response published. The Government welcomed the analysis and debate that the report stimulated. At the same time as publishing the Government's response the Home Secretary launched a consultation exercise, thus enabling the debate to be continued with the wider involvement of Parliament and the public. In launching this consultation exercise the Home Secretary outlined the real difficulties of reconciling security and liberty in an open society and the importance of reaching an informed judgement on how to proceed in the years ahead. We are still considering the responses to this consultation.

Mr **Mavrommatis** questioned whether it was right to leave a detainee in legal limbo without the opportunity of being brought before a judge.

This is not the case. Those certified under the Act have the right of appeal to SIAC, which is a superior court of record chaired by a High Court judge. All 17 detainees have exercised this right.

The determinations for the first 10 appeals were handed down together, the appellants (A et al) were given leave to appeal to the Court of Appeal and it is this appeal that was heard in July this year and the judgement given on 11 August.

The Act also provides for the certificates to be reviewed by SIAC 6 months after certification, or if the individual appeals, 6 months after the date on which their appeals were finally determined.

Certification must then be reviewed every three months thereafter. On review SIAC must cancel a certificate if it considers that there are no longer reasonable grounds for the Secretary of State's belief or suspicion.

Those certified and detained under the part 4 powers can apply for bail at any time.

You will see from the above that the question raised by **Ms Gaer** in relation to the points raised by Amnesty's suggestion that this amounts to an indefinite criminal sentence, or that there are no avenues of challenge, is not accepted by the Government.

#### EVIDENCE FROM GUANTANAMO DETAINEE

Yesterday **Mr El-Masry** raised the question, in the context of the letter written by Moazzem Begg, as to whether material that had been obtained as a result of torture had been used as evidence before SIAC.

The written response to the issues we have provided explains the context in which the issue of evidence that may have been obtained as a result of torture arose during the appeal of “E”. Whilst it was initially considered in relation to the specific appeal it was adopted by all of the appellants.

The question of whether material was relied on that may have been the result of torture was considered fully by SIAC, they had the full information before them about the material and where it had come from. They concluded that there was no material that had been obtained as a result of torture. Had there been any question of its being established that it had been obtained as a result of torture, SIAC would have said so. The Court of Appeal upheld the position taken by SIAC and confirmed 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 SoS had in fact been obtained by torture or other treatment in violation of ECHR Article 3.”

### Proscribed organisations

**Ms Gaer** raised a question about proscribed organisations under the Terrorism Act 2000. Section 11 of that Act provides that a person commits a criminal offence if he belongs or professes to belong to a proscribed organisation. It is a defence for a person charged under this section to prove:

- (a) that the organisation was not proscribed on the last (or only) occasion on which he became a member or began to profess to be a member, and
- (b) that he has not taken part in the activities of the organisation at any time while it was proscribed.

It is therefore for the prosecution to prove beyond reasonable doubt that an individual is a member of a proscribed organisation. But the individual has a defence if he can show that, though he may in fact be a member of a proscribed organisation, it was not proscribed when he became a member and he has not taken part in its activities while proscribed.

The House of Lords has recently considered this provision in a case called *Sheldrake v DPP*. It held by a majority that in establishing the defence provided for, the defendant has what is called an “evidential” burden, rather than a “legal” burden. This means that he need only adduce evidence sufficient to raise an issue with respect to the matter. The court or jury will then assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not. The Government will be considering the implications of the judgement.

## **POLICE AND PRISONS**

**[Bob Daw]:** We have addressed the questions raised by **Ms Gaer** and **Mr. Grossman** on prisons and the Independent Police Authority within the written text and we will write to Committee on the issue raised on conflicting statistical data. However I would wish to say something on prisons in the UK.

The UK Prison Services operate in three separate organisations covering England and Wales combined, Scotland, and Northern Ireland. Although there are many common features, policies and accountabilities vary.

There are established and transparent arrangements which recognise responsibilities contained in a range of international instruments, which include UNCAT, that safeguard standards of humane treatment for prisoners. Each prison service has tried and tested criteria and review protocols for

groups of prisoners such as those in segregation facilities, and victims of assault or violence.

Healthcare in prisons operates on the general principles of equivalence with NHS (public health service) care.

All prison services in the UK record events and characteristics that assist the management of prisons ensure public accountability and assures the interests of prisoners. Each service is open to improvements in information collection and services. Private sector establishments are required to meet the same standards of prison management and accountability as public sector establishments.

All prison services are particularly concerned to detect and protect vulnerable prisoners. Specific developments include suicide and self-harm risk management, support for prisoners with mental health problems, prisoners with learning difficulties and potential victims of violence, both prisoners and staff.

Mr Chairman, that is very much a summary of our answers to the questions raised by **Mr Grossman, Ms Gaer and Mr Rasmussen and Mr Mavromatis**. Detailed responses are contained in the written material.

### [Sexual Violence]

In addressing the questions raised by **Mr. Grossman and Ms Gaer** regarding prison issues, we have drawn examples from the three prison services; England and Wales, Scotland and Northern Ireland. The principles apply across the United Kingdom.

**Ms Gaer** asked whether there is any monitoring of sexual violence in prisons both of official on prisoner and prisoner on prisoner.

The Prison Services take matters of violence between prisoners and violence between staff and prisoners seriously. Each prison service has well established arrangements for investigation of reports of allegations of these types.

Violence between prisoners has been monitored specifically in Scotland for ten years. The rise in apparent assaults may be due to a number of influences and we use all available information to direct improvements across the entirety of prison activities. Recent increases in the prison population have given rise to overcrowding and, occasionally, an increase in tension that can result in isolated incidents. The illegal drugs market and local rivalries are two phenomena of life outside prison that bring conflict into these institutions. Likely explanations also include greater willingness to report assault and the statistical variation from year to year that results from recording small numbers of events.

The monitoring of sexual violence in prison is not specifically carried out. Given the culture of prisons, (often including homophobic prisoner attitudes, the shame and stigma of victims of sexual assault and concern of prisoners not to upset fragile family relationships with those in the community), specific studies can be illustrative, but routine statistical collection would be unreliable.

However, levels of threat or intimidation, general satisfaction ratings of routine prison life and perception of personal safety, collected in annual prisoner surveys (over 75% response rate), give indicative information.

All Prison Services in the UK continue to encourage reporting intimidation and assault in order to promote good order, to counter bullying, to create lower levels of tension, and to promote a progressive regime.

**Mr Grossman** asked what procedures are in place to prevent retaliation against prisoners making allegations of sexual abuse by guards.

UK Prison Services have a responsibility to keep prisoners safe. The UK is committed to doing this by constructively and consistently taking action to promote fairness and decency and prevent violence. Retaliation of any description is not pervasive in the prison Service and incidents are rare. However, from discussions with other state parties, the committee will be aware that prison is a difficult and demanding environment where staff manage a volatile population. Maintaining a safe environment reduces stress and anxiety, and promotes individual and organizational and public confidence, and therefore policies to prevent retaliation against any form of abuse are mainstreamed as part of Prison Service policies.

In England and Wales, a Prison Service Order on Violence Reduction defines all violence as:

- Any incident in which a person is – abused, threatened, or assaulted;
- This includes an explicit or implicit challenge to their safety, well being or health;
- The resulting harm may be physical, emotional or psychological.

This definition is broader in context, but the order does cover the issue of retaliation against prisoners making allegations.

The Prison Service in Northern Ireland has a complaints procedure. This is currently being enhanced by the creation of a Prisons Ombudsman who will be in place early next year.

### Solitary Confinement

**Mr Grossman** asked about review procedures for determining the continued necessity of solitary confinement.

In Prison Service establishments in England and Wales, there can be three reasons for segregation from the normal prison community:

- Prisoners under punishment
- Prisoners isolated for good order and discipline
- Prisoners isolated at their own request

The use of segregation units was revised in 2003 with further safeguards and procedural standards and audits being introduced. The safeguards have altered the initial reception procedures and the extension to segregation.

Initially prisoners when isolated are seen by either a doctor or a qualified nurse who will consider their suitability for isolation, through the use of a safety health audit. This audit will be referred to an operational governor who will either confirm or decide to deal with the issues in a different manner based on recommendations in the audit.

An extension to segregation is the responsibility of a multidisciplinary review panel which will include a health professional and a member of the Independent Monitoring Board, and other staff members as seen to be necessary.

In the case of prisoners who are segregated for good order and discipline, or at own request, a review panel should be looking for a way to resolve whatever the issues are (transfer out of prison etc).

### Healthcare

**Mr. Grossman** also asked what steps are in place to ensure adequate and timely healthcare for prisoners and asylum detainees.

Within England and Wales healthcare in the community is undergoing considerable changes, with the establishment of Primary Care Trusts (PCTs) who will be the responsible body within their local area. The PCTs are established within communities with Boards whose composition reflects both the local community and the professionals who deliver the healthcare. The PCTs will deal with both primary care and mental health issues with separate trusts designed to deliver both aspects of healthcare.

A decision was taken to transfer the responsibility for the healthcare of prisoners to the PCTs who will be totally responsible for the delivery of both primary and specialist services for prisons in their area. The recommendations from international instruments have always been that healthcare in prisons should as near as possible reflect that which is delivered in the community. The transfer, which will be completed in

2006, is seen as a way of improving the delivery and quality of healthcare in prisons as well as reflecting the delivery and standards of care in the community. This will be monitored against standards by the Healthcare Commission, an independent body established for auditing and monitoring clinical standards in all healthcare establishments including prisons.

For Private prisons, contracts are specified by the Office for Contracted Prisons, which set out the standards for health care that contractors are required to deliver.

For asylum detainees there are contracts detailing the standards to be achieved by the private contractors. Her Majesty's Inspectorate of Prisons, who are also responsible for the monitoring of UK immigration detention centers, monitors the standards.

The position in Scotland and Northern Ireland remains that the Prison Service is responsible for its primary health care, enhanced mental health and addictions services in a manner similar to community health services. Specialist services are the responsibility of the National Health Service in the local area of the prison.

### Police Issues

**Mr Mavrommatis** asked how we ensure independence of police complaints commission and why we do not have it in other parts of the UK such as Scotland.

The Independent Police Complaints Commissioner is established by statute and is responsible to the Home Secretary for the effective and

efficient running of the organisation. It has statutory powers and operates under statutory procedures and therefore is responsible to Parliament for its operational conduct.

The Home Secretary appoints commissioners and the Queen appoints the Chair of the Commission.

Proposals for a statutory Independent Police Complaints Authority will be brought forward by the Scottish Executive next year.

**Mr. Grossman** asked about an apparent inconsistency in data submitted in the 4th Report on deaths in police custody. This will be checked and we will write to the committee.

**Mr. Grossman** asked for statistics on deaths associated with police officers' actions. This will also be provided in writing.]

**[Dame Audrey Glover]:** I will now turn to wider foreign policy issues raised by the Committee:

### **Role of the Prime Minister's Special Envoy on Human Rights**

I will start by responding to the question from **Ms Gaer** regarding the Prime Minister's Special Envoy on Human Rights to Iraq, Ms Ann Clwyd. Ms Clwyd acts in an advisory capacity. Her principal role is to support the Iraqi authorities in addressing the human rights abuses committed against the Iraqi people under the former regime, and in establishing human rights mechanisms for the promotion and protection of human rights. However, Ms Clwyd has also taken an active interest in detention issues, and has visited the UK detention facility at Shaibah and the US run facility at Abu Ghraib (on

three occasions). Ms Clwyd has made recommendations to the UK and US authorities on a range of detention management issues. At no time did Ms Clwyd witness abuse or mistreatment of detainees at either UK or US detention facilities, although she raised one case of alleged mistreatment brought to her attention with the US authorities at the highest levels.

### **Representations to other states on alleged torture or mistreatment**

With regard to **Ms Gaer's** question about representations to other states who may be in breach of international obligations.

#### Iraq

I will first turn to Iraq.

I can confirm that we have made representations to the US at the highest level on numerous occasions, most recently in October 2004, when allegations have come to light where there may be a question of their breaching international obligations in Iraq. We are not at liberty to discuss the content of these discussions, but the committee can be assured that we have raised allegations of mistreatment involving US military personnel brought to our attention, at the earliest opportunity.

In the case of Iraq which is an area of interest to the Committee, as you will know Iraq is not party to the Convention Against Torture. Nevertheless, in light of their other obligations and their public commitment to become party to the Convention, we have also made representations to the Iraqi Interim Government about the importance of investigating all allegations of mistreatment, most recently in October 2004. The Iraqis welcomed the

Memorandum of Understanding with the UK, and we are working closely with them to ensure that procedures are put in place so that all the appropriate standards are met.

Although this goes beyond the scope of our obligations under this Convention, we thought the committee would welcome information on our efforts to help the Iraqis move towards meeting the standards of the Convention. The UK has been at the forefront of efforts to promote human rights in Iraq. I (Dame Audrey Glover) have been the Senior Adviser to the Iraqi Minister of Human Rights since January 2004. During this time I have worked with the Iraqi authorities to secure their commitment to sign the Convention Against Torture which was announced here in Geneva in March. This has been a rewarding achievement given my involvement in the initial drafting of the Convention in the late 1970's. To this end, the UK government is funding training for Iraqi government officials in the application of the Convention, as well as other human rights treaties to which Iraq is party, an obligation which it now seeks to uphold.

I have also supported the Ministry in gaining a permanent presence at the US facility at Abu Ghraib, where a team of Iraqi doctors and lawyers, have unrestricted access to the detainees. This team makes recommendations to the US following their visits, including raising any concerns regarding treatment of detainees which require further investigation. The team has also visited the US facility at Umm Qasr and our own UK facility at Shaibah.

This is in addition to UK efforts to establish appropriate standards in the Iraqi Police Service (IPS) and Iraqi Correctional Service (ICS). The IPS code of conduct sets out basic standards of behaviour, breach of which may lead to disciplinary action. The Minister of the Interior has sent a letter to all Iraqi police that specifically addresses the issue of torture by police. The letter

makes clear that any Iraqi police officer found to be engaged in any torture or abuse of prisoners will be dismissed and will face criminal charges.

We have ensured that human rights training for the Iraqi Police Service (IPS) is interwoven throughout both the eight-week basic course for new recruits and the three-week Transition Integration Programme (TIP course). Through the TIP course for serving police and the basic course for new recruits, it is intended that all police in Iraq will be trained in human rights and democratic policing principles. Both courses include at least 30 hours of topics related to human rights.

We have also supported the development of a Code of Discipline for the Iraqi Correctional Service (ICS). As Martin mentioned yesterday, the UK currently has 2 Senior UK Prisons Advisors and 4 Prisons mentors who are providing training, mentoring and advice to the Iraqi Correctional Services.

[Any concerns evident, or expressed by prisoners or by staff, are discussed with the Prison Governor if appropriate at the time and with the Senior Prisons Advisor. In recent months, a single allegation of abuse of a number of prisoners was made at one site. This was investigated by senior ICS staff, with support and guidance from UK advisors. No evidence was found of mistreatment. As a result of this allegation, and notwithstanding the lack of any evidence to support it, a written ICS Order was issued throughout the southern region reminding all staff of their responsibilities concerning the treatment of prisoners, and of the consequences should such rules be broken. Our UK advisors will continue to make unannounced spot checks on prisons in the south, as do their Iraqi counterparts in the Ministry of Human Rights.]

## Guantanamo Bay

On the issue of Guantanamo Bay, the UK position is clear, not only in respect of British detainees, but generally, that we regard the conditions under which all those detainees have been held in Guantanamo Bay as unacceptable. With respect to British detainees, we have raised their cases with the US Government on a number of occasions, and called for them either to be freed, to be tried fairly in accordance with international standards or to be returned to the UK. We are in a regular dialogue with the US to try and resolve this issue. We have successfully secured the return of five British detainees to date.

As regards allegations of mistreatment by Mr Begg at Bagram, we take all allegations of abuse of British nationals abroad seriously. We are very concerned about the allegations made by Mr Begg and have asked the US authorities to investigate these allegations to assure us that British detainees would not be subjected to any abuse at Guantanamo Bay. The US authorities have told us that they have carried out an investigation and at present can find no information to support the allegation. We have asked the US authorities to carry out a second more detailed investigation. The committee may like to be aware that Mr Begg has confirmed that apart from an incident immediately on arrival in Guantanamo Bay, he has not been mistreated in Guantanamo Bay as recently reported in the media.

## [Rest of World]

More broadly I wish to assure you that the United Kingdom does and will continue to make frequent representations to States from all regions in order to ensure that they comply with international human rights standards, including the absolute prohibition on torture.

As evidence of our activities in this area we would point to the two global lobbying campaigns in support of ratification of the Convention, as well as efforts to seek sufficient ratifications for the Optional Protocol to allow it to enter it force.

Additionally the UK, along with its EU, and OSCE Partners frequently make representations, and undertakes initiatives, to bring pressure to bear on more recalcitrant states. This include active participation in the UN Commission on Human Rights and the UN General Assembly as well as, nationally an extensive programme in support of grassroots human rights projects.]

Turning to the issue of:

#### UK interrogators at Guantanamo Bay

British officials from the Foreign and Commonwealth Office have very recently visited British detainees at Guantanamo Bay for a further welfare visit – this is the ninth so far. And no government has done as much for its nationals. No government has worked harder to resolve the position of its nationals there. And as I have said we have successfully secured the return of five British detainees. We are continuing discussions over the remaining four detainees.

British officials from the Security Service have interviewed a number of detainees in Guantanamo Bay regarding issues relevant to the UK's national security. The Government has a duty to protect the nation's security, and it was important that we got as much information as possible. British officials who visited them acted with the highest degree of professionalism.

All UK personnel are instructed to report immediately any activities carried out by UK personnel or those of any allies with whom we are operating that come to their attention and that could be seen as torture or other cruel, inhuman and degrading treatment.

The Intelligence and Security Committee are currently taking evidence on the issue of detainees and intend to report. We cannot comment any further at this stage.

### **Reporting for the Overseas Territories**

Let me now deal with the issue raised by **Mr Mavrommatis** in relation to the Overseas Territories. I am not sure whether he was making a comment or asking a question, however, he said 'has the time not come to stop tying the OT's into the UK report'. I explained the reason yesterday why the UK joins them in their report. Although the OTs are not constitutionally part of the UK they are not independent. The UK retains responsibility for their external affairs. As such we regard it as appropriate to respond on their behalf and we have pleasure in doing so. We consult extensively with them in preparing the report to the committee and are pleased that on this occasion a representative from one of the OTs was free to join us. But because of their geography and their size it is not always possible for them to do so. This does not, of course, in any way reflect a lack of interest on their part.

### **Torture of UK Nationals**

**Mr Rasmussen** asked for details of cases where UK nationals are alleged to have suffered torture in other states.

The UK takes its consular role on behalf of UK nationals overseas very seriously. We work hard to secure access to UK nationals detained overseas and to ensure that they have legal representation whenever necessary. Our consular staff routinely visit UK nationals who are detained overseas in order to verify that conditions of detention are appropriate and to assure ourselves of the welfare of the UK detainees. But the UK has no consolidated list of cases of torture or ill-treatment suffered by UK nationals, nor do we have a list of countries where such acts have been proven to have occurred. It goes without saying of course, that where we suspect that UK nationals have suffered torture, cruel, degrading or inhumane treatment we will try to take appropriate action to ensure that the situation is remedied.

### **Article 21**

I would like to thank **Mr Rasmussen** for his suggestion in relation to Article 21 of the Convention and we take note of it.

### **Legality of Military Action in Iraq**

In responding to the question raised by **Mr Vallejo**, I would like to say that in relation to the Legality of Military Action in Iraq, the UK regards the question as to whether military action in Iraq violated the UN Charter, as being outside the remit of this committee. However, I would like to state the UK government's position on this issue, which is that the use of force and the occupation were fully in accordance with international law. I would refer to the Attorney General's parliamentary answer of 17 March 2003 and the Foreign and Commonwealth Office Memorandum of the same date, copies of which can be made available to the committee if they wish.

[In November 2002 the United Nations Security Council unanimously adopted resolution (UNSCR) 1441, where all members of the Security Council stated their belief that Iraq had not complied with Council resolutions, including on disarmament, and had proliferated weapons of mass destruction (WMD) and long-range missiles that posed a threat to international peace and security.

UNSCR 1441 gave Iraq one final opportunity to comply with its disarmament obligations, by giving up once and for all its WMD and the means to deliver them. The burden was placed squarely on Iraq, including a requirement to co-operate fully with the weapons inspectors and make a currently accurate, full and complete declaration of its WMD holdings.

Unfortunately, Saddam chose not to take the opportunity offered to him: his regime failed to give the UN weapons inspectors the full, active and immediate co-operation that the international community demanded. In almost four months of inspections, the regime failed to answer a single outstanding question about its WMD programmes, or resolve any outstanding issues as requested by the UN.

Our decision to take military action to enforce Iraq's disarmament obligations, in accordance with the relevant UN Security Council resolutions, was taken as a last resort. The Iraqi regime's refusal to co-operate left us with no option. Our decision was supported by a large majority in the House of Commons on 18 March 2003.

I would therefore re-emphasise that the legal basis for the use of force against Iraq derived from the combined effect of UNSCRs 678, 687 and 1441; and all of these resolutions were adopted under Chapter VII of

the UN Charter, which allows the use of force for the express purpose of restoring international peace and security.

The occupation which followed the conflict was likewise fully in accordance with international law, including UN Security Council Resolutions.

Our presence in Iraq is now based on the consent of the Iraqi Interim Government and authorised by UNSCR 1546.]

### **Illegality of Transferring Prisoners to Guantanamo Bay**

In relation to the illegality of transferring prisoners to Guantanamo Bay under the Geneva Conventions, which was a question asked by **Mr Vallejo**, this is a matter which should be directed to the US authorities.

### **Extradition and Assurances**

**Ms Gaer, Mr El-Masry and Mr Rasmussen** raised the issue of assurances in cases of removal from the UK. The UK is committed to abiding by its international obligations and it is UK policy not to remove any person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Additionally it is UK policy not to remove a person to a country where there is a real risk that the death penalty will be applied.

All of the UK's actions with regard to removals from the UK should be seen in the light of our firm commitment to our international obligations. But if we consider that securing assurances from a State authority will enable us to remove a person to a country in a manner consistent with our international

obligations, then we believe it is worth trying to do so. We acknowledge that this is a difficult area, but believe that, properly handled, assurances can help us meet our international human rights obligations, while allowing legal processes to be properly carried out. Clearly, the nature of any assurances and level at which they were provided (usually they are sought at Ambassadorial or Ministerial level), would need to be sufficient to satisfy both ourselves and our independent Courts that any consequent removal would be lawful.

**Ms Gaer** also raised the points made in a recent Guardian article. We are not in a position at present to comment on individual cases.

**[Jonathan Spencer]:** Mr. Chairman, there are three further subjects which were raised by the Committee, that do not fall under the specific responsibility of any of the substantial delegation. **Ms Gaer** asked about the Female Genital Mutilation Act 2003, and **Mr Grossman** asked about corporal punishment of children in non-state schools. Answers to these two questions are included in the written material with which you are being provided – I can read these answers out if you wish me to do so, but – looking at the clock - you may feel there are more productive ways of using the time remaining to us. In respect of **Mr Grossman's** question about differential prosecution rates for Afro-Caribbean defendants, I will propose that we send a note to the Committee next week setting out our position, if that would meet with your approval.

Mr Chairman, that concludes our remarks in relation to the questions you posed to us yesterday. The full delegation is now available to you to answer any further questions you have, or to clarify the position of the UK Government in any further regard. For our part, we look forward to a

stimulating exchange which I hope may be instructive on both sides in relation to this vitally important international Convention.

### **[Female Genital Mutilation Act 2003**

**Ms Gaer** asked about prosecutions under the Female Genital Mutilation Act 2003. The Act came into force on 30 March 2004 in England, Wales and Northern Ireland, and similar legislation is currently before the Scottish Parliament. There have been no prosecutions under the 2003 Act. Nor, so far as we know, were there any prosecutions under the previous Act, which was passed in 1985.

That does not necessarily mean that the legislation is a failure. The Act demonstrates our belief that the practice is unacceptable. And it allows us to prosecute someone if a case should warrant it. Since April this year, the law has extended to acts committed overseas by a UK national or resident. And the new law increases the penalties so they are commensurate with the seriousness of the offence.

Nevertheless, we recognise that the apparent lack of enforcement raises questions. We understand that the position we are in is one shared by most European States, who have legislation on female genital mutilation but have seen no prosecutions. So far as we are aware, only France has had a successful prosecution and even then the charge was one of assault rather than a specific offence of mutilation.

The Committee may be interested to know that the All-Party Parliamentary Group on Population, Development and Reproductive Health did a survey in 2000 about female genetic mutilation. The

Group explored the work being done by organisations in the UK and overseas. Their report explored likely reasons for the lack of prosecutions. Possible reasons were a lack of awareness of the legislation, pressure from family and the wider community to remain silent, and the fear by the enforcement organisations of being labelled racist or insensitive to other cultures. The report has provided a useful platform on which to develop programmes of education and outreach.

### **Corporal Punishment of Children**

**Mr Grossman** asked what mechanisms were in place to monitor the use of corporal punishment in non-state schools. Corporal punishment has been outlawed in England, Scotland, Northern Ireland and Wales in all schools - state and independent.

Corporal punishment in England and Wales was ended for state schools and state maintained or assisted schools or pupils by s548 Education Act 1996. This was extended to private schools by s131 School Standards and Framework Act 1998. Corporal punishment in all schools in Scotland and Northern Ireland was made unlawful by the Standards in Schools etc Act 2000 and the Education and Libraries (Northern Ireland) Order 2003 respectively.

Childminders and others in day care settings were prevented from using corporal punishment by s5 Day Care and Childminding (national Standards) (England) Regulations 2003 (SI 2003 No.1996), which came into force on 1/9/03. A recent application to the ECHR by a "Christian" group to allow CP on faith grounds was turned down without a hearing.

INSET PARAGRAPHS AS BACKGROUND ONLY

The Government does not in general monitor compliance with the criminal law. If people have been victims of criminal offences, they (or their parent in this area) can be expected to notify the police in the usual way, potentially leading to police investigation and prosecution where appropriate.