



General Assembly

Distr.: General
1 March 2010

Original: English

Human Rights Council

Thirteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights, including
the right to development**

Note verbale dated 26 February 2010 from the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and refers to the letter* sent by the United Kingdom Deputy Permanent Representative on 21 February 2010 in response to the joint paper on global practices in relation to the practice of secret detention in the context of countering terrorism.

The United Kingdom hereby confirms the request that that letter be made public on the OHCHR website, in accordance with the original intentions of the authors of the study.

* Reproduced in the annex, as received and in the language of submission only.

Annex

From the Office of the Deputy Permanent Representative

21 February 2010

Martin Scheinin
Special Rapporteur on the promotion and protection of
human rights while countering terrorism

Manfred Nowak
Special Rapporteur on torture and other forms of cruel, inhuman or
degrading treatment or punishment

Shaheen Sardar Ali
Member of the Working Group on Arbitrary Detention

Jeremy Sarkin
Chairperson-Rapporteur of the Working Group on Enforced and
Involuntary Disappearances.

Palais de Nations
CH-1211
Geneva

Dear Special Rapporteurs and Chairpersons-Rapporteur,

On 23 December 2009 you provided us with relevant excerpts from your joint paper “on global practices in relation to the practice of secret detention in the context of countering-terrorism” and asked for our comments prior to its publication for the 13th session of the Human Rights Council in March.

We replied in full to those excerpts in our letter to you of 15 January. In that letter we rejected the allegations made in your draft paper and urged you to reconsider the relevant portions prior to publication. This further letter is to respond to the final paper published on your website on 26 January. Although you amended that paper slightly, it still makes an alarming number of egregious claims that the UK firmly rejects.

The UK Government is extremely concerned at the manner in which you have come to the conclusions you have reached, and the way you have handled the allegations made and the information which we have provided to you. In your paper, you have chosen to present as established fact a number of unproven allegations about UK involvement in the practice of secret detention, relating in particular to Diego Garcia and the use of “proxy detention sites”. We do not accept these allegations. The UK position on secret detention is clear: we oppose any deprivation of liberty that amounts to placing individuals beyond the protection of the law.

The Foreign Secretary has written to the United Nations Secretary General to communicate the extent of our dismay about the preparation and publication of this paper. His letter emphasised that the UK strongly supports the important work of both the OHCHR and the Special Procedures. Your expertise and independence play an essential role in upholding human rights across the globe. It is precisely because your role and reputation are so important that he raised with the Secretary General the lapse in standards in the secret detention report, which he believes risks harming the credibility of the Special Procedures.

The UK Government is committed to cooperation with the Special Procedures and takes their allegations extremely seriously. As you are aware, over the last twelve months we have set out our position to you on these issues on a number of occasions. We are disappointed that these exchanges and the information provided to you within them is not adequately reflected in your paper. Moreover, we are concerned that, given that you have not been able to provide us with any further information to substantiate your allegations, you appear to be proceeding on the basis of rumour and allegation alone.

We are limited in our ability to comment publicly on specific cases, including those summarised in an annex to your paper. Some of them are the subject of live litigation within the British courts. We would like to underline that, while we cannot comment on the detail of these case summaries, this should not be understood as acceptance of the allegations made therein. We would also like to reiterate our firm rejection of the broader allegations your paper makes regarding renditions through Diego Garcia, “proxy detention sites” and UK complicity in the practice of secret detention.

As outlined in our letters to you of 19 March, 17 August and 23 October 2009, and in the Foreign Secretary’s statement to Parliament on 21 February 2008, we are not aware of any cases of individuals having been secretly detained in facilities on Diego Garcia or any other UK territory.

In our letter to you of 15 January we expressed our grave dismay that your draft paper stated “the United Kingdom authorities have admitted that two rendition flights landed in Diego Garcia”. This assertion was prejudicial and unwarranted. We have acknowledged that the US government, in February 2008, informed us of two rendition flights in 2002, each containing one detainee, having refuelled at the UK Overseas Territory of Diego Garcia. However, this information was contrary to previous assurances from the US. We have been clear publicly on numerous occasions that we were not aware of the flights at the time, and did not give the US permission to use British territory for such a purpose. We would have expected you to reflect this information in your draft paper. Nevertheless, we acknowledge that you have, to some degree, amended this portion of your final paper.

With regard to the very serious accusation that Diego Garcia hosts a US detention facility, you refer to a letter of October 2009 sent to the UK Government which specifically alleges the detention of Mr. Naser on Diego Garcia around November 2005. The UK Government replied to this letter on 23 October 2009 and rejected the allegation. We were surprised, therefore, that you chose neither to acknowledge our letter nor consider the information provided within it in your draft paper.

In our letter of 15 January, for the avoidance of doubt, we set out that information provided in our letter of 23 October 2009. We made clear that the US has informed us that they have not interrogated any terrorist suspect or terrorism-related detainee on Diego Garcia in any case since 11 September 2001, and that allegations of a CIA holding facility on the island are false. We are confident, therefore, that the allegations that Mr. Naser was held on Diego Garcia are inaccurate. We note that, following our letter of 15 January, you have amended your final paper to acknowledge the information we have repeatedly provided you on this issue.

Nevertheless, as we have said previously in meetings last year with Mr Nowak on 7 September and Mr Scheinin on 25 March and 28 May, we take all such allegations extremely seriously and would welcome any relevant information to substantiate these claims. To date you have not provided any such information.

We are surprised that you name the UK government as complicit in the use of “proxy detention sites” when your paper states that its own knowledge on the subject is limited and, moreover, that “several of these allegations cannot be backed up by other

sources". Your study alleges UK complicity in secret detention by "knowingly... taking advantage of the situation of secret detention by sending questions to the country which detains the person or by soliciting or receiving information from persons who are being kept in secret detention". We do not accept this allegation and have responded publicly to a UK parliamentary committee, the Joint Committee on Human Rights- we attach our reply to their 2009 report on 'Allegations of UK Complicity in Torture' for your reference (<http://www.fco.gov.uk/resources/en/pdf/7179755/hr-torture-report-response>).

Your report alleges UK complicity in the cases of several individuals, including Binyam Mohamed, Salahuddin Amin, Zeeshan Siddiqui, Rangzieb Ahmed and Rashid Rauf. As you know, our ability to comment on individual cases is limited for various reasons, including that some are the subject of ongoing legal proceedings in the UK. However, there is no truth in suggestions that the security and intelligence services operate without control or oversight. There is no truth in the more serious suggestion that it is our policy to collude in, solicit, or directly participate in abuses of prisoners. Nor is it true that alleged wrongdoing is covered up. For example, during the course of Binyam Mohamed's legal proceedings allegations of possible criminal wrongdoing were made. The Home Secretary referred these allegations to the Attorney General for her consideration, who subsequently referred the matter to the Metropolitan Police who are now investigating.

In addition, English courts have rejected claims that alleged UK complicity in ill-treatment amounted to abuse of process in two cases, namely Mr Amin and Mr Ahmed. These judgments are publicly available. The judge in Mr Ahmed's case stated "I specifically reject the allegations that the British authorities were outsourcing torture". In Mr Amin's case the judge examined his allegations and found that there was no evidence to suggest that the UK authorities were complicit in the unlawful detention or ill-treatment of Mr Amin in Pakistan. We cannot provide further comment on either of these cases at the current time, given that there are ongoing legal proceedings in both.

Our policy makes clear our opposition to secret detention. For example, in respect of consular matters, whenever a consular official becomes aware that a mono British national (and, under certain circumstances, a dual British national) is detained overseas the first step is to contact them and, if the detainee wishes, to visit them. Once in contact with the detainee they will check if the detainee has any concerns over how they are being treated, offer to get into touch with their family, if they so wish, and give them details of prisoner welfare charities. If we are aware of the detention of a British national, but we are denied access to the detainee, we will urgently push the host government to enable this access. In certain exceptional cases, we have taken similar action on humanitarian grounds in respect of non-British nationals, notwithstanding that we do not have a consular locus to act in such cases. Beyond this, as I have already made clear, we oppose any deprivation of liberty that amounts to placing individuals beyond the protection of the law.

In addition, you will be aware of the oversight mechanisms relevant to British government policy on this issue if only because we have described them in our meetings with you. The work of the Intelligence and Security Committee (ISC), the UK parliamentary body charged with oversight of the policy of the Intelligence and Security Agencies, is important in this context. In particular the ISC papers on Detention (2005) and Rendition (2007), which we provided to you in July 2009 along with answers to your questionnaire, explain how our Agencies seek to ensure that they do not contribute to the detention of individuals outside of a legal framework.

As outlined above and as we made very clear in our answers to your questionnaire that preceded this study, the UK government is firm in its opposition to secret detention. The UK supports the rule of law, and our position remains that individuals suspected of involvement in terrorism should be brought to justice whenever possible.

We remain committed to maintaining an open relationship with the Special Procedures, and look forward to engaging in a constructive dialogue on the issue of secret detention at the 13th session of the Human Rights Council in March. We welcome an informed debate on these issues and support the role that all of you play in Special Procedures, but such a debate needs to be informed by more than unsubstantiated rumour and allegation and should respect the role that states' oversight mechanisms play in upholding the rule of law.

Yours sincerely,

(signed)

Philip Tissot

Chargé D'Affairs
