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Совет по правам человека
Четырнадцатая сессия
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Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Информация, представленная Комиссией по равенству и правам человека Великобритании*

Записка секретариата

Секретариат Совета по правам человека настоящим препровождает сообщение, представленное Комиссией по равенству и правам человека Великобритании** и воспроизводимое ниже в соответствии с правилом 7 b) правил процедуры, содержащихся в приложении к резолюции 5/1 Совета, согласно которому участие национальных правозащитных учреждений основывается на процедурах и практике, согласованных Комиссией по правам человека, включая резолюцию 2005/74 от 20 апреля 2005 года.

* Национальное правозащитное учреждение с аккредитационным статусом категории "A", присвоенным Международным координационным комитетом национальных учреждений, занимающихся поощрением и защитой прав человека.

** Воспроизводится в приложении в полученном виде только на том языке, на котором оно было представлено.

Annexe

Written statement submitted by the Equality and Human Rights Commission (A Status NHRI of Great Britain)

The Equality and Human Rights Commission's response to the joint study on secret detention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances (A/HRC/13/42)

In this brief statement, the Equality and Human Rights Commission (The Commission) gives its opinion on the joint study on secret detention and torture and comments on the response to the study from the Foreign and Commonwealth Office of the UK government, published in February 2010.

The Commission welcomes the government's statement in response to the joint study. It stated unequivocally that the allegations are unsubstantiated and that the UK does not condone or support torture carried out by foreign agencies. However, the Commission does not believe that this statement is sufficient in itself and remains concerned that not enough has been done by the UK to reassure the Commission and the public following these allegations.

In the opinion of the Commission, the newly elected UK government needs to urgently put in place a review process to assess the truth or otherwise of all these allegations. Any review process must satisfy both the Commission and the public:

- That those carrying out the review will be given complete access to all of the relevant materials,
- That the review team are completely independent of government and appointed in a transparent and independent manner;
- That, whilst ensuring that any real and substantial risks to national security are protected, the review will be as open and transparent as possible, putting as much material in the public domain as possible and holding as many evidence sessions in public as possible; and
- Will publish its findings as soon as possible with the fewest redactions consistent with the protection of national security.

As the previous government has rightly pointed out in its statement, the allegations contained in this report are not new. They have variously been the subject of media reports, court cases (both brought against the complainants in the criminal sphere and by the complainants by way of judicial review), and reports by NGOs and by Parliamentary committees. Some are currently being investigated by the police and some of the judicial review cases are ongoing, some are completed. However, none of these mechanisms deal with all the allegations or do so in a comprehensive manner and there are concerns that many in civil society believe that at least some of the allegations are true and that they are not isolated incidents. The Commission believes that only its recommended review will ensure that the public will have confidence in the government's response.

The report details allegations that in one way or other British officials were involved in interrogation of suspects in breach of human rights provisions when those suspects were held in detention. They also allege mistreatment, in some cases, of a level that may amount to torture, by other (non-British) agents, but say that the UK officials were aware of that treatment at the time.

The allegations set out in the report, if true, are obviously of great concern and would violate the provisions of the regional human rights treaty, in particular, Article 3 of the European Convention of Human Rights, as well as the United Nations Convention Against Torture and the International Covenant for Civil and Political Rights.

In 2008, the Commission intervened in the case of Al-Saadoon and Mufdhi v United Kingdom, In this case, the ECtHR found that the UK Government violated the European Convention on Human Rights by failing to take every reasonable step to obtain assurance from Iraqi authorities that the men wouldn't face the death penalty.[1]

Apart from litigation, many of these matters have been the subject of Parliamentary Committee reports, most notably the Foreign Affairs Committee Human Rights Annual Report 2008 (7th report of 2008-09), 9 August 2009, and the Joint Committee on Human Rights (JCHR) 23rd report of session 2008-2009 Allegations of Complicity in Torture, 4 August 2009. The Intelligence and Security Committee has also reported on the earlier allegations, in particular in relation to the handling of detainees[2] and transfer of detainees outside the law[3].

The JCHR, in its conclusion to its recent report, set out a long list of unanswered questions which should be the subject of an independent inquiry, supported by the publication of relevant documents including the guidance to officers on standards to be applied in detention and interviewing detainees overseas, and the legal advice to ministers about the relevant human rights standards to be applied in that context.

In its short response to the JCHR's detailed report, the government stated that it did not agree with the recommendations and that the issues "are being addressed through a number of processes." It mentioned specifically the police investigation into allegations relating to Binyam Mohammed and one other case, the availability of civil court proceedings, the fact that they have agreed to publish a revised version of the guidance to intelligence and

[1] Faisal Al-Saadoon and Khalaf Mufdhi were arrested in Basra in 2003 on suspicion of involvement in the murder of two British servicemen. At the expiration of the UN mandate on 31 December 2008, which authorised the role of British forces in arrest, detention and imprisonment tasks in Iraq, the men were handed over to the Iraqi High Tribunal for trial in contravention of an interim order from the ECtHR.
The detainees had already brought judicial review proceedings in the UK and subsequently to the ECtHR, which had issued interim measures preventing the transfer of the men to Iraqi authorities. These were disregarded by the UK. The Commission intervened in the case, submitting to the Court that where Britain's international law obligations conflict with their obligations under the ECtHR, human rights considerations should prevail. The commission welcomed the ECtHR ruling and continues to intervene in cases where it suspects breaches of human rights law as they pertain to allegations of torture and other cruel, inhuman or degrading treatment or punishment, and/or the breach of human rights and fundamental freedoms while countering terrorism.
The Commission, however, believes individual court cases are not sufficient to dispel concerns over the allegations in the Joint study on secret detention. A full and independent enquiry would be the most effective means to reassure the Commission and the public that allegations are unfounded.

[2] ISC March 2005, The handling of detainees by UK intelligence personnel in Afghanistan, Guantanamo Bay and Iraq

[3] ISC July 2007, Rendition

security officers, and that the ISC has been asked to consider any new developments since their 2005 and 2007 reports.

In response to the Commission's own inquiries of the UK government about investigations into these allegations, oversight mechanisms and accountability of the intelligence and security services, the Government has relied on the same "ongoing processes" in its reply.

In the Commission's view none of these mechanisms have yet been able to establish whether or not the now widespread allegations of UK complicity in torture overseas are substantiated. In any event, the only way of now getting to the truth of these allegations is for a full and independent review to be set up with a wide remit to investigate, report, and make recommendations.

The Equality and Human Rights Commission
May 2010