



## Assemblée générale

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### Conseil des droits de l'homme

#### Treizième session

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

### **Informations communiquées par la Commission nationale kényane des droits de l'homme\***

#### **Note du secrétariat**

Le secrétariat du Conseil des droits de l'homme fait tenir ci-joint la communication présentée par la Commission britannique de l'égalité et des droits de l'homme\*\* qui est reproduite conformément à l'article 7 b) du Règlement intérieur figurant dans l'annexe de la résolution 5/1 du Conseil des droits de l'homme, qui dispose que la participation des institutions nationales des droits de l'homme s'exerce selon les modalités et les pratiques convenues par la Commission des droits de l'homme, y compris la résolution 2005/74 du 20 avril 2005.

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\* Institution nationale des droits de l'homme à laquelle le Comité international de coordination des institutions nationales pour la promotion et la protection des droits de l'homme a accordé le statut d'accréditation «A».

\*\* La communication est reproduite en annexe telle qu'elle a été reçue, dans la langue originale seulement.

## Annexe

### **The Equality and Human Rights Commission's response to the Joint study on secret detention of the Special Rapporteur on torture & other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights & fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention & 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 reply to the study from the Foreign and Commonwealth Office of the UK government. The Commission welcomes the government's statement in response to this joint study. The government has stated unequivocally that the allegations are unsubstantiated and that it 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 itself about the allegations and believes 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 UK government needs urgently to 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 government rightly points 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. 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 another 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. The Commission welcomes the government's assurance that "had the special rapporteurs provided us with any significant information to substantiate their allegations, we would unquestionably have pursued further very careful investigation of their claims. We would do so today, if such information was to be provided." Nevertheless a full independent review is the only way in which the Commission and the public can be reassured that such allegations are unfounded. A mere assertion by the government that the complaints are unsubstantiated cannot suffice.

Apart from litigation in the UK's courts many of these matters have been the subject of a number of Parliamentary committee reports, most notably in the last few months 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<sup>1</sup> and transfer of detainees outside the law<sup>2</sup>.

The JCHR, in its conclusion to its recent report, sets out a long list of unanswered questions which it says 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 states that it does not agree with the recommendations and that the issues "are being addressed through a number of processes." It mentions 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 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

February 2010

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<sup>1</sup> ISC March 2005, The handling of detainees by UK intelligence personnel in Afghanistan, Guantanamo Bay and Iraq

<sup>2</sup> ISC July 2007, Rendition.