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Foreign Affairs Committee

# The FCO's human rights work in 2012

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### *Volume II*

*Additional written evidence*

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## The Foreign Affairs Committee

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The current staff of the Committee are Kenneth Fox (Clerk), Peter McGrath (Second Clerk), Zoe Oliver-Watts (Senior Committee Specialist), Dr Brigid Fowler (Committee Specialist), Louise Glen (Senior Committee Assistant), Vanessa Hallinan (Committee Assistant), and Alex Paterson (Media Officer).

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# Written evidence

## Written evidence from REDRESS


SUMMARY OF SUBMISSIONS

— The FCO's policy to strengthen the ability of States to counter terrorism whilst working to protect human rights in those States is welcomed; however, concerns remain about human rights violations in which the UK was allegedly involved abroad, and these concerns need to be urgently addressed to make the policy's human rights component effective;

— The FCO's *Preventing Sexual Violence Initiative* (PSVI) and the G8 Foreign Ministers' Declaration are both welcomed. For these to have an impact in practice the UK needs to make a concerted effort to contribute to their effective implementation including financially, and further promote the objectives of, and rights inherent in these initiatives;

— The FCO should urgently address the marked increase in the numbers of British nationals reporting torture and other ill-treatment each year, taking into account the Committee against Torture's General Comment 3 regarding article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

— There is an urgent need for the UK to ensure that it is not a safe haven for anyone suspected of having committed international crimes by taking more effective steps to investigate and prosecute suspects within the UK's jurisdiction;

— Where UK forces or officials are found to have committed torture abroad, such as in Kenya during the time of the Mau-Mau insurrection, it should accept full responsibility and provide adequate reparation without any further delay;

— The FCO should consistently take a strong stance on allegations of torture in its diplomacy, including with its closest allies, and needs to develop a clear, precise and multi-faceted strategy to address torture in States where this practice is entrenched.


### INTRODUCTION

1. This submission is in response to the Foreign Affairs Committee's ("the Committee") invitation for submissions of evidence in respect of its inquiry announced on 17 April 2013 into *"Human Rights and Democracy*: *The 2012 Foreign and Commonwealth Office Report"* ("the annual Report").[1]

2. REDRESS is an international non-governmental human rights organisation with a mandate to assist torture survivors to obtain justice and reparation for their suffering. Since its establishment in December 1992, REDRESS has accumulated wide expertise on the rights of victims of torture both within the United Kingdom and internationally. It has previously made written submissions to the Committee in relation to human rights matters.[2]

3. We note that the Committee would particularly welcome submissions which address, *inter alia*,[3] the FCO's efforts to strengthen the ability of states to counter terrorism whilst working to protect human rights in those states; the declaration by G8 Foreign Ministers on the prevention of sexual violence in conflict, and the impact of the FCO's Preventing Sexual Violence Initiative. We shall therefore address these two issues, and other aspects arising from the annual Report, including human rights for British nationals tortured abroad; the UK as a safe haven for suspected perpetrators of human rights abuses; torture prevention and reparation; and countries of concern.

### SUBMISSIONS

**A. The FCO's efforts to strengthen the ability of states to counter terrorism whilst working to protect human rights in those states—Secretary of State's speech February 2013**

4. REDRESS has noted the key points the Secretary of State made on 14 February 2013.[4] These key points are re-iterated in the annual Report under *Working in Partnership to Counter Terrorism Overseas,*[5] where the following issues are also dealt with: *Deportation with Assurances; The Detainee Inquiry;* and *Guantanamo*

[1] Foreign and Commonwealth Office, *"Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report"*, 15 April 2013, available at: http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf.

[2] See e.g. REDRESS, *Submission to the Foreign Affairs Committee's Annual Inquiry into the FCO's Human Rights Work in 2011,* 25 May 2012, available at: http://www.redress.org/downloads/publications/121017FACsubmission.pdf. See also REDRESS, *Submission to Foreign Affairs Committee Inquiry into UK's Relations with Saudi Arabia and Bahrain,* 19 November 2012,available at: http://www.redress.org/downloads/publications/130123%20Submission%20on%20Saudi%20Arabia%20and%20Bahrain.pdf.

[3] Foreign Affairs Commons Select Committee, 17 April 2013, available at: http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2010/human-rights1/.

[4] The Rt Hon William Hague MP, FCO, *Countering terrorism overseas,* 14 February 2013, available at: https://www.gov.uk/government/speeches/countering-terrorism-overseas.

[5] Above, n.1, pp. 75–78.

*Bay.*[6] We note too that in the *FCO's Strategy for the Prevention of Torture 2011–15* ("the Strategy")[7] it is stated that "[t]he work that we do to contribute to preventing torture globally is underpinned by… our domestic reputation and practices…"[8]

5. In this context, REDRESS welcomes the Secretary of State stating in his speech that "[w]e must also strengthen the ability of states to counter terrorism, while protecting human rights, as called for by the UN."[9] REDRESS submits that the FCO should acknowledge the crucial role played by the *UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*[10] and urgently implement his recommendation to the UK set out in the paragraph immediately below.

6. Regarding the *Detainee Inquiry*,[11] the Special Rapporteur said recently:[12]

> The [Gibson] Inquiry lacked the power to compel the attendance of witnesses or the production of documents. Nor did the inquiry have any power to request the production of evidence from other States, or their personnel. Moreover, under the protocol established for the inquiry, the final decision as to whether any document or finding could be released to the public was vested in the Cabinet Secretary (a senior civil servant)… On 18 January 2012 the Justice Secretary announced…the Government had…decided to terminate [the Inquiry]. He indicated however that the Inquiry would provide an interim report, which was delivered to the Prime Minister on 27 June 2012. Despite Government assurances of transparency, the interim report has not so far [been] published…The Special Rapporteur calls upon the United Kingdom to publish the interim report of the Gibson Inquiry without further delay… *He further invites the United Kingdom to make a public statement setting out a timetable for the start of the proposed judge-led inquiry, indicating what its powers and terms of reference will be. The Special Rapporteur recommends that the shortcomings in the terms of reference for, and the powers of, the Gibson Inquiry should be remedied in the resumed inquiry, and commends to the attention of the United Kingdom…best practice for commissions of inquiry into allegations of this nature.* [Emphasis added]

7. The UN Committee against Torture (CAT) has also expressed concern about "the structural shortcomings of the [Gibson] inquiry".[13] In an April 2013 submission to CAT[14] REDRESS noted that "the Government has not used the *interregnum* to develop any mechanisms for a new inquiry, and/or to deal with the structural shortcomings [of the Gibson Inquiry]…"[15] REDRESS therefore asks the Committee to ascertain why nothing is being done, and to challenge the Government's delay and apparent willingness to remain passive while the police investigation takes place.

8. Regarding *Guantanamo Bay,*[16] the FCO maintains that "UK efforts continue to secure the release and return of the last former legal UK resident, Shaker Aamer."[17] Mr Aamer is currently on hunger-strike, along with the majority of detainees in Guantanamo Bay, at the time of this submission. It cannot be predicted what the outcome will be, given the seriousness of the current situation, but there can be little doubt of the on-going intense suffering being experienced by men who have been detained for over ten years and with no end to

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[6] *Ibid.,* pp.76–78.

[7] FCO*, Strategy for the Prevention of Torture 2011–15,* 27 October 2011, available at: http://www.fco.gov.uk/resources/en/pdf/fcostrategy-tortureprevention. The Committee will recall it looked closely at the Strategy last year in its inquiry into the FCO's 2011 *Human Rights and Democracy Report—s*ee REDRESS, *Submission to the Foreign Affairs Committee's Annual Inquiry into the FCO's Human Rights Work in 2011*, 25 May 2012, available at: http://www.redress.org/downloads/publications/121017FACsubmission.pdf.

[8] Above, n.7, p. 10. The Strategy also states, at pp. 4–5: "… HMG must have a good record itself. As the Foreign Secretary has said, where problems have arisen that have affected the UK's moral standing we will act on the lessons learnt and tackle the difficult issues head on… The position of the Government is clear: the prohibition on torture applies to all individuals. The Prime Minister has said, "I think torture is wrong … there is … a moral reason for being opposed to torture—and Britain doesn't sanction torture… I would say if you look at the effect of Guantánamo Bay and other things like that, long term that has actually helped to radicalise people and make our country and our world less safe". Our reputation on torture prevention worldwide is boosted by showing how the UK achieves compliance with our legal obligations to prevent, prohibit and punish torture."

[9] Above, n.4.

[10] The current Special Rapporteur is Mr Ben Emmerson QC, see: http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx.

[11] *The Detainee Inquiry* is dealt with in the annual Report at pp.77–78—see above, n.1.

[12] *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson,* Second Annual Report,1 March 2013, UN Doc. A/HRC/22/52, pp.16–17, available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22–52_en.pdf.

[13] Committee Against Torture*, List of issues in connection with the consideration of the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, adopted by the Committee at its forty-ninth session (29 October-23 November 2012),* UN Doc. CAT/C/GBR/Q/5, 17 January 2013, para. 24, p. 5, available at: http://www2.ohchr.org/english/bodies/cat/cats50.htm.

[14] The submission was for CAT's consideration of the UK's Fifth Periodic Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, held in Geneva on 7–8 May 2013. For a news release on the consideration, see United Nations Office at Geneva, *Committee against Torture examines report of the United Kingdom*, 8 May 2013, available at: http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/300B16959AACC877C1257B650056C4AA?OpenDocument.

[15] REDRESS, *Submission to the Committee Against Torture on its List of Issues for Consideration of the UK'S 5th State Party Report,* 19 April 2013, p. 2, available at: http://www.redress.org/downloads/publications/REDRESS%20SUBMISSION%20TO%20CAT%20ON%20UK%20%20%2019%2004.pdf.

[16] *Guantanamo Bay* is dealt with in the annual Report at p. 78—see above, n.1.

[17] *Ibid.*

their ordeal in sight.[18] Those representing Mr Aamer have criticised in detail the UK's handling of his case from the time of his rendition in 2002 to date.[19] This raises serious questions about the UK's willingness to try to influence its closest ally where terrorism concerns and human rights intersect, and REDRESS asks the Committee to call on the FCO to urgently strengthen its call for Mr Aamer's release and return.

9. Regarding *Deportation with Assurances,*[20] REDRESS submits that there remain fundamental problems with the use of diplomatic assurances in the context of the UK's non-refoulement obligations, and it continues to oppose their use as a method of deporting or extraditing persons to States known to practice torture.[21] The UK policy is to use bilateral diplomatic agreements with detailed factual assessments (as far as the UK is concerned) of the likelihood of the State involved abiding by such agreements, on a case by case basis. However, where a State has a long record of failing to meet its obligations under the UN Convention against Torture ("the Convention"), using use bilateral diplomatic agreements with such assessments "fundamentally undermines the coherence and credibility of the Convention and ultimately the international legal framework."[22]

10. Since the FCO has said the UK is committed to working within and strengthening the UN framework, we ask the Committee to question why the FCO disagrees with the previous and current UN Special Rapporteur on Torture who have both said that the practice of diplomatic assurances is "an attempt to circumvent the absolute prohibition of torture and non-refoulement."[23]

11. In sum, REDRESS is concerned that the UK's policy on counter-terrorism and human rights will not translate into any meaningful change, unless and until there is a genuine resolution of the above-mentioned serious issues arising from the UK's counter-terrorism work with States overseas. The Committee should raise these concerns with the FCO, given the serious human rights challenges the UK has already faced when working with democratic States such as the USA in relation to counter terrorism policies, and given further that "the threat from terrorism is greatest in the countries where the rule of law and human rights are weakest."[24]

**B. Impact of FCO's Preventing Sexual Violence Initiative launched in May 2012, and the April 2013 declaration by G8 Foreign Ministers on prevention of sexual violence in conflict**

12. REDRESS welcomes the FCO's *Preventing Sexual Violence Initiative* (PSVI) launched on 29 May 2012 by the Foreign Secretary.[25] In particular, it welcomes the intended goals to increase the number of perpetrators brought to justice both internationally and nationally; to strengthen international efforts and coordination; and to support States to build their national capacity to prosecute acts of sexual violence committed during conflict.

13. The deployment of the UK Team of Experts to several countries including post-conflict countries is to be commended as a way to support local efforts to investigate allegations of sexual violence and gather evidence. While criminal investigation and prosecutions are prerequisite for survivors of sexual violence to obtain justice, the Committee should ask the FCO to ensure that victims' rights to participation and reparation form an integral and equally important part of the PSVI efforts.

14. The PSVI rightly highlights the need to overcome numerous obstacles which hamper effective investigations and prosecutions. Countries affected by armed conflict where crimes of sexual violence occur are commonly characterised by weak State institutions. Their domestic justice systems lack capacity, resources and independence to investigate and prosecute crimes of sexual violence, resulting in widespread impunity for alleged perpetrators. Protection of victims and witnesses, as well as assistance and support services for victims, such as medical care, psychosocial support and other rehabilitation services are also lacking. Structural inequalities between men and women before the law, and social attitudes and stigma associated with sexual violence, constitute additional hurdles.

15. REDRESS also welcomes the initiative to draft a new, non-legally binding, International Protocol on the Investigation and Documentation of Sexual Violence in Conflict as a component of the PSVI. REDRESS stresses the importance of documenting information related to the harm suffered by survivors individually and collectively and to the consequences of sexual violence to adequately implement victims' right to reparation.

[18] See for example The Guardian, *Guantánamo hunger strikers subject to harsh new method of force feeding*, 13 May 2013, available at: http://www.guardian.co.uk/world/2013/may/13/guantanamo-bay-hunger-strike-forced-feeding.

[19] See Birnberg Pierce submission on Mr Aamer to CAT dated 17 April 2013, available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/BirnbergPeircePartners_UK_CAT50-Submission.pdf

[20] *Deportation with Assurances* is dealt with in the annual Report at p. 76–77, see above, n.1.

[21] For a detailed criticism of diplomatic assurance see REDRESS*, The United Kingdom, Torture and Terrorism: Where The Problems Lie*, December 2008, pp. 50–73, available at: http://www.redress.org/downloads/publications/Where%20the%20ProblemsLie%2010%20Dec%2008A4.pdf. See also REDRESS letter to the Foreign Affairs Committee, 20 June 2011, p. 3, available at: http://www.redress.org/downloads/publications/Letter%20to%20FAC%2020%20June%202011.pdf.

[22] JUSTICE, *UN Convention Against Torture (UNCAT): United Kingdom Fifth Periodic Review (May 2013) JUSTICE Written Submission,* para. 9, p.5, available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/JUSTICE_UNCAT_UK_CAT50.pdf.

[23] Human Rights Council*, Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez,* UN Doc. A/HRC/16/52, 3 February 2011, para.63, p. 14, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.pdf.

[24] ??????

[25] The Rt Hon William Hague MP, FCO*, Foreign Secretary launches new Government initiative to prevent sexual violence in conflic*t, 29 May 2012, available at: https://www.gov.uk/government/speeches/foreign-secretary-launches-new-government-initiative-to-prevent-sexual-violence-in-conflict.

This Protocol should draw from existing common standards in the field of human rights and tailor standards adapted to the particular nature of crimes of sexual violence and the specific needs of survivors. This is important as criminal procedures (crucial as they are) are not always adequate avenues to fully address the specific needs of survivors of sexual violence. In doing so, the Protocol should adopt a gender sensitive approach as well as measures for the protection of children.

16. Within PSVI, the UK donation of £1 million over two years to the International Criminal Court's (ICC) Trust Fund for Victims is also to be commended. The Committee should ask the FCO to ensure that victims' rights are effectively guaranteed in the current discussions surrounding ICC reform.

17. Further, REDRESS welcomes the G8 Declaration on 11 April 2013[26] reaffirming the existing status of rape and other serious sexual violence committed in times of armed conflict as acts that amount to war crimes and also grave breaches of the Geneva Conventions and Additional Protocol I. While *per se* not creating new legal obligations, the G8 Declaration is a clear expression of commitment by G8 States to prevent and respond to sexual violence, and their willingness to take action. The Committee should ask the FCO what steps it has taken and considers to take so as to develop a consistent practice of exercising universal jurisdiction over alleged perpetrators of sexual violence, including cases that amount to torture under the UN Convention against Torture, and other international crimes in the UK.

## C. Other issues arising from the annual Report

(a) *Human rights for British nationals tortured or mistreated abroad*

18. The number of allegations of ill-treatment of British nationals overseas has increased considerably, and REDRESS asks the Committee to inquire as to what the FCO is doing to deal with this growing problem.[27] The number of British nationals known to be detained overseas has also increased since the last annual Report from 2572 in 2011[28] to over 2600 in 2012,[29] as has the number of States in which they are held from 87 to 95. To combat torture abroad, the UK has developed a commendable foreign policy document, the *FCO's Strategy for the Prevention of Torture 2011–15,*[30] and yet, its approach to protecting and assisting its own nationals and residents ill-treated abroad is still flawed.[31] There are also serious barriers including state immunity facing such persons in obtaining compensation and other forms of reparation on their return to the UK, where there has been no allegation of UK complicity and the torture survivor wishes to proceed against the State alleged to be responsible.[32]

19. The UK's policy ought to emphasise that it will, to the fullest extent possible and in all cases, take action to help obtain justice and reparation for its nationals and long term residents who allege to have suffered torture or ill-treatment, irrespective of where the violation is alleged to have been committed. Consular assistance needs to be more resolute and effective. Diplomatic protection (the espousal of claims) must become more than a theoretical possibility, as it is at present,[33] both to secure the rights of individual victims and to make a meaningful contribution to the eradication of torture on which the UN Convention against Torture is based.

20. Where a UK torture survivor has exhausted domestic remedies or there are none, the failure of the UK to espouse a claim means that in practice a survivor has no remedy. In 2006 the House of Lords (as it then was) ruled in *Jones*[34] that state immunity remains a bar to an action in the UK against a foreign state and individual state officials for torture committed in that State. *Jones* was decided on an interpretation of the UK's

[26] FCO, *G8 Declaration on Preventing Sexual Violence in Conflict*, 11 April 2013, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf. See also REDRESS News Release, *G8 commitment to tackle impunity for rape in conflict welcomed by human rights groups,* 12 April 2013, available at: http://www.redress.org/downloads/12042013_PR_G8-grave-breaches-declaration_AIUK_REDRESS_TRIAL_OK.pdf.

[27] The annual Report says there were **over 100 new reports** in 2012, see above, n.1 p.100. According to figures obtained under the Freedom of Information Act there were on average **about 50 cases** per year for the period 2005–2010, in 67 different states altogether, see REDRESS, *Tortured Abroad: The UK's obligations to British Nationals and Residents*, September 2012, pp. 47–48, Annex C, available at:http://www.redress.org/downloads/publications/121001tortured_abroad.pdf. The annual Report for 2011 did not give the number of new cases which had arisen that year.

[28] Last year the FCO said: "As of 30 September [2011], we were aware of 2,572 British nationals detained in 87 countries overseas"— United Kingdom Foreign & Commonwealth Office *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report,* April 2012, p. 120, available at: http://centralcontent.fco.gov.uk/pdf/pdf1/hrd-report-2011. During 2011–2012, 6,015 arrests were handled in 181 countries—see Guardian 28 June 2012 *"Britons arrested abroad mapped"*, available at: http://www.guardian.co.uk/news/datablog/interactive/2012/jun/28/britons-arrested-abroad-2012.

[29] Above, n.1, p.100.

[30] Above, n.7.

[31] REDRESS has recently published a comprehensive report on the UK law, practice and policy on consular assistance and diplomatic protection, analysing current shortcomings in respect of torture survivors falling within the above category, see REDRESS, *Tortured Abroad: The UK's obligations to British Nationals and Residents*, September 2012, available at: http://www.redress.org/downloads/publications/121001tortured_abroad.pdf.

[32] *Ibid.*

[33] *Ibid.,* pp. 24–40.

[34] *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia),* 14 June 2006, [2006] UKHL 26, available at: http://www.publications.parliament.uk/pa/ld200506/ldjudgmt/jd060614/jones-1.htm. REDRESS intervened in the case. The case has subsequently been pending in the ECtHR since December 2006 in *Jones v. United Kingdom* (Application Number 34356/06) *and Mitchell and Others v. United Kingdom* (Application Number 40528/06) in which REDRESS has also intervened. See the intervention at http://www.redress.org/case-docket/jones-v-uk-and-mitchell-and-others-v-uk.

State Immunity Act 1978. A Private Members Bill (the Torture (Damages) Bill) was introduced to amend the said Act so that state immunity could no longer be raised in a claim based on torture when no adequate and effective remedy for damages is available in the State where the torture is alleged to have been committed. The said Torture (Damages) Bill passed in the House of Lords in 2008 but failed to proceed through the House of Commons because the Government opposed it.[35]

21. In sum, survivors cannot obtain relief through diplomatic means *nor* can they sue a foreign State in UK courts. REDRESS asks the Committee to pursue this issue with the FCO by questioning how it can justify preventing civil claims *and* not espousing claims, particularly bearing in mind CAT's recent General Comment 3 which states *inter alia* that "[u]nder article 14 [of the Convention] a State party shall ensure that victims of any act of torture or ill-treatment under its jurisdiction obtain redress. States parties have an obligation to take all necessary and effective measures to ensure that all victims of such acts obtain redress."[36]

(b) *The UK as a safe haven for suspected perpetrators of human rights abuses*

22. The FCO's annual Report states that the "Government remains fully committed to the principle that there should be no impunity for the most serious international crimes"[37] and it also refers to the subject of "Human rights offenders and entry to the UK."[38] The *Strategy* refers to the obligations under the Convention to ensure that there are no safe havens for individuals accused of torture.[39]

23. However, there is no reference to the law, practice or policy concerning suspected perpetrators of torture who are already ***in*** the UK.

24. Only two foreign suspects of international crimes have been successfully prosecuted in the UK to date.[40] This is despite figures indicating that there are a considerable number of alleged perpetrators present or residing in the UK. According to a reply from the UK Border Agency to a 2012 Freedom of Information request from the press, there were "more than 200 suspected war criminals [...] recently [...] identified by UK immigration officials with most continuing to live freely in the country [...]".[41] The press report went on to state: "it was previously revealed that a further 495 suspected war criminals had been identified by the Home Office in the five years to June 2010."[42] An on-going issue of particular concern is that of four Rwandan genocide suspects. More than four years after their release from custody, following a failed attempt to extradite them to stand trial in Rwanda, these suspects continue to live freely in the UK. The Metropolitan Police during this time has not commenced any investigation into their alleged crimes with a view to a prosecution in the UK.[43]

25. REDRESS submits that the FCO and other Government ministries/agencies should work together to ensure that the UK does not continue to be a *de facto* safe haven. Building on the *Strategy,* a Government-wide approach to address **accountability** and **redress** for torture is necessary, including adequate screening to ensure that foreign diplomats appointed and working in the UK are not suspected of having perpetrated international crimes. Swift action should be taken to declare any foreign diplomat for whom there are credible allegations relating to his or her involvement in such crimes a *persona non grata*.[44]

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[35] Full details of the attempts to amend the State Immunity Act, in which REDRESS was very closely involved, can be accessed at http://www.redress.org/the-torture-bill/the-torture-bill-in-parliament. The Government says, effectively, that the UK would be out of step with State practice if it endorsed a human-rights exception to State immunity in civil claims. REDRESS has argued that without such an exception and where there is no other forum to bring a claim but in the UK, a survivor is left with no effective remedy.

[36] CAT, General Comment 3: *Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, 13 December 2013, para. 27, available at: http://www2.ohchr.org/english/bodies/cat/comments.htm.

[37] Above n.1, p. 49.

[38] *Ibid.,* p. 52. The annual Report states that "[w]here there is independent, reliable and credible evidence that an individual has committed human rights abuses, the individual will not normally be permitted to enter the United Kingdom"—*ibid.*

[39] Above, n.7.

[40] Afghan Faryadi Zardad was convicted of torture and hostage taking in 2005 and sentenced to 20 years imprisonment. There is an unreported High Court judgment of 19 July 2005 in *R v. Zardad* which relates to certain legal aspects of the case. An appeal was denied 17 February 2007. On 1 April 1999, Anthony (Andrzej) Sawoniuk was sentenced under the War Crimes Act 1991 to life imprisonment for the murder of two civilians. The Court of Appeal upheld his conviction on 10 February 2000—*R. v. Sawoniuk*, Court of Appeal (Criminal Division), [2000] Crim. L. R. 506. The House of Lords denied leave to appeal on 20 June 2000—Financial Times, *War Criminal Refused New Hearing*, 20 June 2000. Currently, one criminal trial concerning acts of torture is pending involving an accused Nepalese citizen, Colonel Kumar Lama, arrested in the UK in January 2013. REDRESS Press Release, *REDRESS welcomes UK prosecution of Nepali torture suspect,* 7 January 2013, *available at:* http://www.redress.org/downloads/Nepalpressrelease_070113_final.pdf.

[41] Yorkshire Post, *UK "safe haven" for war crimes suspects as 200 remain at large*, 8 May 2012, available at: http://www.yorkshirepost.co.uk/news/at-a-glance/general-news/uk-safe-haven-for-war-crimes-suspects-as-200-remain-at-large-1–4524193

[42] *Ibid*. Further, the report also said: "Michael McCann MP, chairman of the All-Party Group for the Prevention of Genocide and Crimes Against Humanity, has criticised the UKBA for not acting quickly enough when suspicions came to light. He also expressed frustration at his inability to obtain answers from the UKBA about the full scale of the problem. "We need a frank exchange between the UKBA and police and we need Ministers to provide straight answers to straight questions.""

[43] See REDRESS, *UK Extradition Policy: Submission to the Joint Committee on Human Rights (JCHR*), 27 January 2011, available at: http://www.redress.org/downloads/publications/JCHR%20Submission%2027%20January%202011.pdf. The UK has said it is awaiting a further extradition request, but it has not been forthcoming to date. The failed extradition hearing found that there was evidence that the men had a case to answer, and the reason the extradition was refused was based on fair trial considerations.

[44] See, for example, The Guardian, *Sri Lankan diplomat may avoid questioning on war crimes claims*, 5 April 2012, at http://www.guardian.co.uk/politics/2012/apr/05/sri-lankan-diplomat-war-crimes-allegations.

(c) *Torture prevention and reparation*

26. It is clear from the annual Report[45] and the *Strategy*[46] that the FCO's primary approach to the scourge of torture is for UK policies to have an effective impact on the **prevention** of torture world-wide. However, and as referred to in the paragraph immediately above, **accountability** and **redress** cannot be separated from the other aspects of torture, and this also applies to prevention. If the UK is to have a credible and effective impact on the prevention of torture, it needs to have a consistent policy on torture as a whole including on how it deals with any claims brought relating to UK responsibility for torture.

27. This includes addressing past violations, such as the claims by torture survivors in 2009 arising from the Mau Mau uprising against British colonial power in Kenya in the 1950s and early 1960s. Although the UK accepts that the Kenyans seeking redress suffered appalling torture by British colonial officials (including castration, severe sexual abuse and systematic beatings), the FCO pursued various technical defences to block the claims raised.[47]

28. Initially, the FCO argued that if atrocities were sanctioned by the then British Government they were legally acting as the Kenyan Government at the time, and therefore any liability for such atrocities was inherited by the Kenyan Republic as the successor to the Kenyan Colony. In July 2011, the High Court dismissed that argument on the grounds that the British Government had directly participated in the counterinsurgency in its own right.[48]

29. The FCO then argued that the claims were time barred, and REDRESS intervened in this aspect of the case.[49] In October 2012, after a detailed review of the evidence, the High Court ruled in favour of the survivors and ordered the matter to trial.[50] Nevertheless, the FCO then sought leave from the Court of Appeal to appeal. Leave was granted, and the matter was listed to be heard in May 2013. REDRESS applied to intervene in the appeal; however, it is has now been postponed pending discussions exploring the possibility of settling the claims.

30. In a recent open letter to the Prime Minister, human rights groups and others have stated: [51]

> The response of the British Government to vulnerable and elderly victims of (acknowledged) British torture is shameful… Many victims have died since 2009 and will therefore never achieve justice and redress for their appalling, inhuman treatment at the hands of the British colony.
>
> The stance the British Government has taken to these issues is entirely inconsistent with the spirit of the United Nations Convention Against Torture, its international legal obligations and the ethical values to which Government Ministers frequently lay claim. Britain's complete unwillingness to deal honourably with victims of its own breaches of human rights in Kenya undermines Britain's moral authority in the world.

31. Whatever the outcome of any settlement discussions are in this particular case, the UK needs to ensure that when it is liable to make reparations for torture this entails not only compensation but a proper public acknowledgement of the wrong done and the harm caused, along with an apology, and where still possible for those responsible to be held to account. This applies not only to those who suffered at the hands of British forces during Colonial times but thereafter, including in Iraq[52] and Afghanistan. REDRESS also submits that in the instant case the UK should have enhanced its anti-torture policies by righting wrongs from the past at the earliest opportunity, and the Committee is asked to challenge the FCO on why it adopted a policy of raising several, ultimately unsuccessful defences against the claims made for more than three years and at least until very recently, instead of seeking to settle from the outset.

(d) *Human rights in countries of concern*

32. ***Afghanistan:*** Listed as a country of concern in the annual Report, the FCO refers to the problem of the transfer of UK-captured detainees to the Afghan authorities.[53] There were 70 prisoners still apparently held in British military bases in Afghanistan as of the beginning of 2013.[54] On 29 November 2012, Defence Secretary Philip Hammond revealed to the High Court that "secret new information had persuaded him to

[45] Above, n.1, pp. 46—47.

[46] Above, n.7.

[47] The first judgement in the case is *Mutua and Others v Foreign and Commonwealth Office*, 21 July 2011, [2011] EWHC 1913 (QB), available at: http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutua-v-ors-judgment.pdf.

[48] *Ibid.*

[49] REDRESS interventions are available at: http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutua-v-ors-judgment.pdf. and at http://www.redress.org/downloads/Redressfurthersubmission-Mutuacase.pdf.

[50] *Mutua and Others v Foreign and Commonwealth Office*, 5 October 2012, [2012] EWHC 2678 (QB), available at: http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/mutua-fco-judgment-05102012.pdf.

[51] The letter dated 27 March 2013 is available at: http://www.liberty-human-rights.org.uk/materials/letter-to-the-rt-hon-david-cameron-mp-mau-mau-apr-2013-.pdf.

[52] The importance of dealing properly with alleged abuses in Iraq has again been recognised in the decision on 24 May 2013 in *R (Ali Zaki Mousa and others) and Secretary of State for Defence*, [2013] EWHC 1412 (Admin), available at: http://www.judiciary.gov.uk/media/judgments/2013/azm-others-v-sos-defence.

[53] Above, n.1, p. 123.

[54] Open Society, *Fears for prisoners left behind after Afghan withdrawal*, 3 January 2013, available at: http://www.thebureauinvestigates.com/2013/01/03/fears-for-prisoners-left-behind-after-afghan-withdrawal/.

abandon the transfers despite claims by British officials that the situation in Afghan jails had improved."[55] He therefore implemented a further moratorium on detainee transfer,[56] currently still in force. REDRESS previously recommended,[57] *inter alia,* that the UK should accept full responsibility under international humanitarian law and international human rights law for all persons it detains in Afghanistan, and that it should retain custody of all detainees until Afghanistan has properly and effectively implemented mechanisms and safeguards in its detention and prison systems for the prohibition and prevention of torture and ill-treatment. The Committee should question the FCO on how the problem will be resolved by the time of the planned withdrawal of UK forces next year.

33. ***Bahrain:*** Not listed as a country of concern in the annual Report, reference is made to Bahrain in a "Case study"[58] where it is said that "the overall trajectory on *(sic)* human rights in Bahrain is one of improvement over the long term."[59] This sanguine analysis is contradicted by the findings of a recent report published by REDRESS and the International Rehabilitation Council for Torture Victims (IRCT), which highlighted a range of concerns over on-going torture and ill-treatment—which the "Case study" does not refer to; the REDRESS report also found that reforms have been inadequate, particularly failing to ensure accountability and justice for the victims of torture.[60] Concerns over the lack of external scrutiny were heightened on 22 April 2013 when, only a few weeks before the commencement of the UN Special Rapporteur on Torture Juan E. Méndez's official visit, the Government of Bahrain unilaterally cancelled the mission, citing delays in "on-going national dialogue". In light of these developments, the Committee should ask the FCO to state **specifically and comprehensively** what it is doing to convince Bahrain to stop torture, given the UK is a "long-standing friend of the people of Bahrain."[61]

34. ***Maldives:*** Not listed as a country of concern in the annual Report, nor referred to in a "Case study," REDRESS nevertheless welcomes the February 2013 visit of the FCO Minister for South Asia, Alastair Burt, to the Maldives; it is noted that he urged the Maldivian Government to investigate allegations of serious violations of human rights, including politically-motivated arrests and torture, by the police during and in the immediate aftermath of the change in Government in February 2012. In light of the upcoming presidential elections in September 2013, REDRESS is concerned that the already dire human rights crisis will continue to worsen. REDRESS has received numerous reports of police assaults on peaceful protesters and those considered political dissidents. However, no steps have been taken to remedy these violations and ensure justice and reparation for the victims. Despite the credible and widespread allegations of police using excessive force which are compounded by lack of investigations and prosecutions, the Maldives is not a country of concern for the FCO, and we ask the Committee to raise this state of affairs with the FCO.

35. ***Rwanda:*** Not listed as a country of concern in the annual Report, reference is made to Rwanda in a "Case study"[62] and the UK's support for the work of the International Criminal Tribunal for Rwanda (ICTR) "in tackling impunity and delivering justice to the victims of the Rwandan genocide and to secure its legacy."[63] While the ICTR has undoubtedly contributed to the accountability of those most responsible for the 1994 genocide in Rwanda, REDRESS continues to receive complaints from survivors of the genocide that as the ICTR failed to provide reparation, it did not provide justice to survivors. These concerns are echoed in regards to domestic justice processes.[64] REDRESS, together with the Survivors' Fund and several Rwandan survivor organisations, has urged the ICTR, as well as the Government of Rwanda, to put together a taskforce on

[55] The Guardian, *Philip Hammond cites torture risk as he halts transfer of prisoners to Afghan jail*, 29 November 2012, available at: http://www.guardian.co.uk/world/2012/nov/29/prisoner-transfer-to-afghan-jails-halted.

[56] *Ibid.* On 6 November 2012 the High Court ordered that the UK government maintain a temporary moratorium on the transfer of detainees to Afghan authorities due to the risk of torture and ill-treatment. See BBC News, *High Court blocks UK detainee transfers in Afghanistan*, 2 November 2012, available at: http://www.bbc.co.uk/news/uk-20185001. The ruling was based upon a case brought by Serdar Mohammed, an Afghan national detained by the UK in Afghanistan in 2010, who was transferred to Afghan Intelligence, where it was alleged he was tortured and subjected to an unfair trial. Previously, the case of *Maya Evans* revealed serious concerns about the detainee transfer policy which applied to Afghans captured by British soldiers, following claims that the detainees were subject to torture after being handed to Afghan authorities: see *The Queen (on the application of Maya Evans) v. Secretary of State for Defence,* [2010] EWHC 1445 (Admin), available at: http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-evans-v-ssd-judgment.pdf. The case was brought by a UK peace activist, alleging that the transfers were in breach of the UK's *non-refoulment* obligations. In the *Maya Evans* case, REDRESS submitted a witness statement in support of the claimant.

[57] REDRESS, *Foreign Affairs Committee: New Inquiry: Afghanistan: Submissions of the Redress Trust (REDRESS),* 23 January 2009, p. 8, available at: http://www.redress.org/downloads/publications/Submission_to_FAC_23_January_2009.pdf. In addition, REDRESS recommended that the UK should properly investigate what has happened to all persons already transferred; where allegations of torture or ill-treatment arise these should be investigated promptly, impartially and effectively; and the UK should make full reparation to any person abused post-transfer. The UK should take full, comprehensive and effective steps to assist the Afghan authorities in building the rule of law, internationally acceptable prison and detention systems and a torture-free society; and it should take a lead in working with and within UN, EU, NATO and ISAF institutions to ensure the strengthening of and compliance with its *non-refoulement* principles and obligations.

[58] Above, n.1, pp. 48–49.

[59] *Ibid.,* p. 49.

[60] REDRESS, *Bahrain: Fundamental reform or torture without end?*, April 2013, available at: http://www.redress.org/downloads/publications/Fundamentalreform.pdf.

[61] Above, n.1, p. 49.

[62] Above, n.1, p. 38.

[63] *Ibid.,* p. 51.

[64] REDRESS and others, *Right to Reparation for Survivors- Recommendations for Reparation for Survivors of the 1994 Genocide against Tutsi, Discussion Paper*, October 2012, available at: http://www.redress.org/downloads/publications/121031right_to_rep.pdf.

reparation so as to facilitate the establishment of a reparation programme in Rwanda.[65] With the first two cases transferred from the ICTR to Rwanda, and the closure of the local Gacaca courts in June 2012, it is critical that the FCO emphasises the right of survivors to reparation in its support of Rwanda's domestic justice system and supports relevant efforts of civil society to ensure that survivors are finally granted reparation, in accordance with their rights.

36. ***Nepal:*** Not listed as a country of concern in the annual Report, nor referred to in a "Case study," REDRESS highlights Nepal's failure to deal with both past and on-going human rights violations. In relation to conflict-era crimes, on 14 March 2013 an Ordinance to set up a Commission on Disappeared Persons, Truth and Reconciliation (TRC) was signed by the President as part of a wider political deal and without consultation with victims. This Ordinance contains provisions likely to further entrench impunity and is contrary to international law as it allows amnesties for serious human rights violations.[66] The Government has also taken steps to thwart the criminal justice process even in the few cases that have proceeded to a limited extent.[67] The UK authorities should be commended for their prosecution of a Nepali army officer for crimes allegedly committed during this period,[68] and should continue to push for accountability at all levels and reparation for victims. Meanwhile, ongoing impunity allows violations to continue: for example last year CAT released its report on its examination of Nepal under Article 20 of the Convention, which found that torture is committed systematically in the country.[69] The FCO should call on Nepal to implement CAT's recommendations.

37. ***Saudi Arabia:*** Listed as a country of concern in the annual Report, the FCO states that it judges torture allegations "by virtue of their frequency and the variety of sources, to be credible."[70] The FCO also says that "more needs to be done" by the Saudi authorities to address concerns about torture.[71] REDRESS asks the Committee to suggest to the FCO that it insist Saudi Arabia demonstrate its commitment to adhering to its international obligations by compensating UK nationals, including Keith Carmichael (who founded REDRESS) and the claimants in the *Jones* matter[72] who have not received redress for their suffering. The UK should be ready to espouse diplomatic claims if Saudi Arabia refuses to provide compensation, given the apparent lack of any effective domestic remedies in Saudi Arabia.

38. ***Sri Lanka:*** Listed as a country of concern in the annual Report, the FCO highlighted concerns over access to justice, the rule of law and continued reports of torture. REDRESS, together with the Asian Human Rights Commission, has filed several cases before the UN Human Rights Committee that illustrate these concerns, including in the context of violence against women and discrimination of minorities.[73] The Committee should ask the FCO to ensure that these concerns are shared with other UK agencies, particularly to ensure that Sri Lankan nationals in the UK are not subjected to refoulement in violation of UK's international obligations.[74] In co-sponsoring the UN Human Rights Council's 2013 resolution on Sri Lanka, the UK did as it promised in the FCO report.[75] The Committee should ask the FCO to take further steps with a view to ensuring the implementation of the recommendations made in that resolution.

39. ***Sudan*:** Listed as a country of concern in the annual Report, the FCO highlighted legislation facilitating torture such as the National Security Act, the targeting of human rights defenders, "widespread reports that security forces routinely carry out torture" and the use of corporal punishment and other violations of women's

[65] *Ibid*.

[66] A point stressed by the UN High Commissioner for Human Rights on 20 March 2013, when she said that she "deeply regrets the passing of [the Ordinance] with power to recommend amnesties for serious human rights violations, and strongly urged the government to rectify this and other provisions which would contravene international standards"—OHCHR, *Pillay says Nepal commission must not grant amnesties for serious violation,* 20 March 2013, available at: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13163&LangID=E. For a detailed analysis of the earlier version of the ordinance, see the International Centre for Transitional Justice, *Seeking Options for the Right to Truth in Nepal*, November 2012, available at: http://ictj.org/sites/default/files/ICTJ-Briefing-Paper-Nepal-Ordinance-Dec-2012-ENG.pdf; also OHCHR, *An OHCHR Analysis of the Nepal Ordinance on Investigation of Disappeared People, Truth and Reconciliation Commission 2012*, December 2012, available at: http://www.ohchr.org/Documents/Press/Nepal_OHCHR_Analysis_TJ_Ordinance_Dec_2012.pdf.

[67] See Advocacy Forum and REDRESS, *Held to Account: Making the law work to fight impunity in Nepal,* December 2011, available at: http://www.redress.org/downloads/publications/Nepal%20Impunity%20Report%20-%20English.pdf.

[68] Above, n. 40.

[69] Committee Against Torture, *Report on Nepal adopted by the Committee against Torture under article 20 of the Convention and comments and observations by the State party,* para. 108, available at: http://www2.ohchr.org/english/bodies/cat/docs/Art20/NepalAnnexXIII.pdf. See also Advocacy Forum and REDRESS, *Torture being systematically practiced in Nepal,* 21 November 2012, available at: http://www.redress.org/downloads/NepalPressrelease211112-Final.pdf.

[70] Above, n.1, p. 211.

[71] *Ibid*., p. 212.

[72] Above n.34.

[73] See REDRESS*, Comments on Sri Lanka's Combined Third and Fourth Periodic Reports to the Committee Against Torture, September 2011,* available at: http://www.redress.org/downloads/publications/Redress%20submission%20to%20CAT%20September%202011.pdf.

[74] See Freedom from Torture, *Submission to the Committee against Torture for its Follow-Up to the concluding observations from its examination of Sri Lanka in November 2011*, available at: http://www2.ohchr.org/english/bodies/cat/docs/ngos/Freedom_from_Torture_SriLanka_CAT_followup.pdf.

[75] See UN General Assembly Resolution, Human Rights Council Resolution, 22nd Session (19th March 2013), Agenda item 2, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, A/HRC/22/L.1/Rev.1 available at: http://daccess-dds-ny.un.org/doc/RESOLUTION/LTD/G13/122/61/PDF/G1312261.pdf?OpenElement.

rights.[76] The annual report also mentions the case of REDRESS client Magdy El-Baghdady. We welcome the FCO's emphasis that it will "continue to press" for a prompt and impartial investigation be undertaken in his case.[77] Separately however, concerns have been raised over training being provided to Sudanese officials, including members of the intelligence and security forces. This training is being provided notwithstanding systemic and continuing concerns over the failure of these institutions to respect human rights, including the prohibition of torture.[78] The Committee should ask the FCO how it ensures that the officials chosen for training have a clear record, that any such training or courses provided are effective in promoting human rights and that they do not inadvertently provide a veneer of—unwarranted—legitimacy for attendees and institutions that are failing to protect human rights.

40. ***Zimbabwe:*** Listed as a country of concern in the annual Report, regular allegations of torture continue. Judging by experiences to date, there are serious concerns that announcements of reform, such as by the Minister for Justice Chinanamsa,[79] including his assertion that Zimbabwe will ratify the Convention, will not be followed up in practice. The Committee should ask the FCO what its **specific** policy is towards Zimbabwe in this regard, given that the *Strategy* places so much emphasis on persuading States to ratify,[80] and particularly in the light of the forthcoming election which yet again is giving so much cause for concern.

### Recommendations

The Committee should call for the FCO to:

- urgently address the human rights concerns such as the Detainee Inquiry, Diplomatic Assurances and Guantanamo Bay still outstanding from its counter-terrorism policies;
- ensure that its *Preventing Sexual Violence Initiative* is taken forward on a firm and clear basis, adequately resourced, and involves close co-operation with other key States and international institutions;
- review its approach to the issue of British nationals and residents tortured or mistreated abroad with a view to making both torture prevention and reparation more effective in practice through more active consular assistance and the principled use of diplomatic protection;
- work more closely with other departments and institutions to make the "no-safe haven" policy a reality;
- consistently take a strong stance and raise concerns regarding alleged torture, and develop a multi-faceted strategy to address torture, particularly in States where the practices are entrenched.

*25 May 2013*

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## Written evidence from the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) in the UK was established in 1974 and works to end the international arms trade. The arms business has a devastating impact on human rights and security, and damages economic development. CAAT believes that large scale military procurement and arms exports only reinforce a militaristic approach to international problems.

2. CAAT's submission to your inquiry covers a number of areas where the UK government's advocacy of human rights is undercut by its arms export promotion and related policies. At the evidence session on 4th May 2013 for your Committee's inquiry into the UK's relations with Saudi Arabia and Bahrain successive witnesses were asked whether human rights' improvements in those countries were more likely to be encouraged if the UK government raised its concerns in private or more publicly. The witnesses indicated that a mixture of both approaches was most likely to be effective. However, whether the approach is public or private, it will be undermined by the UK government's arms export campaigns. These give legitimacy to the governments to which the military equipment is being marketed, and undermine any UK expression of human rights concerns.

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[76] Above, n. 1, pp. 227–232. See also ACHPR, Communication 402/2001: *REDRESS and others v Sudan, Submission on Admissibility*, 15 August 2102, available at: http://www.redress.org/downloads/Communication402_2011_Admissibility_Submission_15Aug2012.pdf. See also REDRESS and others, *Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and People's Rights: Article 5 of the African Charter: Prohibition of torture, cruel, degrading or inhuman punishment and treatment,* April 2012, available at: http://www.redress.org/downloads/publications/1204%20Comments%20to%20Sudans%204th%20and%205th%20Periodic%20Report.pdf and www.pclrs.org.

[77] Above, n.1, p. 229.

[78] Sudan, Question asked by Lord Avebury [HL3913], House of Lords, Hansard, 14 December 2012, Volume 741, Part No.85, Col W485–6, in particular the answer: "A condensed version of the wider security context course is also delivered in Khartoum, as is a Defence Academy-delivered course focused on strategic leadership. A small number of places on these courses are offered to students from military intelligence, national intelligence, the security forces and the Ministry of Foreign Affairs as part of a cross-government approach to encouraging improved governance and accountability within the Sudanese security sector"—available at: http://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/121214w0001.htm.

[79] Above, n.1, p. 262.

[80] Above, n.7.

3. This point was acknowledged by the Committees on Arms Export Controls (CAEC), of which your Committee is part, in its July 2012 report. It said that there is an "inherent conflict between strongly promoting arms exports to authoritarian regimes whilst strongly criticising their lack of human rights at the same time." It is disappointing that, in its October 2012 response to CAEC, the Government refused to accept the conflict.

4. However, the Government did partly concede the point in its December 2012 response to your Committee's report on the Foreign and Commonwealth Office' (FCO) human rights work in 2011. This latter had pointed out the overlap between countries listed by the FCO as being of human rights concern ("countries of concern" and the priority list of arms markets drawn up by the UK Trade and Investment Defence and Security Organisation (UKTI DSO), the Government's arms sales unit. CAAT is pleased that the UKTI DSO priority market list will be discussed with the FCO's Human Rights Minister before it is finalised. This is small step in the right direction, but it remains to be seen if this will change the priority list.

## Saudi Arabia

5. One country that has consistently featured as both a "country of concern" and a UKTI DSO priority market is Saudi Arabia. It is ranked at 163 out of 167 on the Economist Intelligence Unit's "Democracy Index 2012" which reflected the situation in December 2012. It was 161 out of 167 in the 2011 Index. The FCO itself says: "Key areas of concern to the UK in Saudi Arabia include restrictions on freedom of expression and assembly in the Eastern Province and elsewhere in the country, the continued use of the death penalty (where the number of executions remains close to the 2011 figures), restrictions on freedom of religion or belief, discrimination against women, and a justice system which still falls short of international standards."

6. The UK government may have raised these concerns with the Saudi authorities, but the FCO's press archive indicates that this rarely happens publicly. Given Saudi Arabia's appalling human rights record, more frequent public condemnations would have been expected have the Government's priority not been arms sales. However, even the lip service paid to human rights would have been undermined by Prime Minister David Cameron's November 2012 visit to Saudi Arabia to promote the sale of BAE Systems' Eurofighter Typhoon aircraft. 48 remain to be built and delivered under the Salam project, but a price cannot be agreed.

7. The UK media, in a notable change from the times when Margaret Thatcher and Tony Blair made similar arms promotion visits, debated the trip. On 5th November 2012 The Guardian editorial said the Prime Minister should admit that the interests of the military-industrial complex were taking precedence over human rights, while the Daily Telegraph headlined its article: "David Cameron defends arms deals with Gulf states". The establishment consensus in favour of arms sales, at least to human right violators, appeared to be breaking down.

8. In March 2013, the Eurofighter Typhoon price still not having been agreed, the UK government sent Prince Charles and the Duchess of Cornwall to Saudi Arabia. The top theme for the royal visit was "military links" and Prince Charles marked the 50th anniversary of the British Military Mission to the Saudi Arabia National Guard (SANG). The visit took place immediately after the Saudi authorities executed seven men for armed robbery, two of them juveniles at the time of the offence. It is hardly a surprise that the expressions of concern over capital punishment and other human rights abuses are ignored, if the UK royals are in town promoting arms sales and military links.

9. It is also somewhat surprising that the UK government sent Prince Charles to a SANG event as the Serious Fraud Office is currently investigating allegations of by whistle-blowers of corruption with regards to GPT Communications Ltd, a subsidiary of EADS, and the Saudi Arabia National Guard Communications Project.

## Bahrain

10. Bahrain was not listed by the FCO as a "country of concern", despite its omission from the list having been questioned by your Committee in past years. Ranked at 150 out of 167 on the "Democracy Index", Human Rights Watch reports that Bahraini security forces "had used excessive force against peaceful protesters, and had arbitrarily arrested, tortured, ill-treated, and denied them fair trials" (World Report 2013). Protest leaders remain in prison and the authorities have continued to jail "human rights defenders and individuals for participating in peaceful demonstrations and criticizing officials."

11. Despite this record of repression, the Bahraini authorities have been courted by UKTI DSO in recent months. UKTI DSO's Senior Military Adviser Air-Vice Marshal Nigel Maddox visited in March 2013. He was followed at the end of April by Richard Paniguian, the Head of UKTI DSO, and the Defence Attaché Commodore Christopher Murray. They discussed "bilateral military cooperation" with the Bahrain Minister for Defence Affairs, Lieutenant General Dr. Sheikh Mohammed bin Abdullah Al Khalifa.

12. Answering questions at his company's AGM in May, BAE Systems Chair Dick Olver confirmed that BAE had been introduced to the official Bahraini delegation at the Security and Policing exhibition in Farnborough in March 2013. BAE later confirmed to CAAT that it had outlined its cyber defence capabilities.

13. The son of King Hamad, Prince and Royal Guard Commander Lieutenant Colonel Sheikh Nasser bin Hamad Al Khalifa, visited the Counter Terror Expo 2013 in London in April. In an official statement he stressed the importance of "new technologies to contain the detrimental repercussions of terrorism."

14. In 2012 a human rights group alleged that the Prince had been "personally engaged" in beating, flogging and kicking pro-democracy protesters in April 2011 (Guardian, 20.6.12). Documentation described how Sheikh Nasser, who is the president of the Bahrain Olympic Committee, launched "a punitive campaign to repress Bahraini athletes who had demonstrated their support [for] the peaceful pro-democracy movement." The prince denied the allegations.

15. In the same week as the Counter Terror Expo, a visit to Bahrain by the United Nations Rapporteur on Torture was indefinitely postponed by the Bahrain government.

16. Detica, a BAE-owned cyber-security firm, has an office in Manama, Bahrain (Chamber.com—Tom Lockhart QGM). The Detica page on the Bahraini British Business Forum classifies Detica's business category as a "training company", noting the range of skills of instructors at Detica, including; knowledge of surveillance, counter-surveillance, covert audio and CCTV deployments, covert tracking, and IT exploitation.

17. Foreign Officer Minister Alistair Burt visited Bahrain in March to lend his support to Bahrain's "reform programme". He also attended a reception aboard HMS Monmouth, a frigate that is part of the "considerable contribution to the bilateral defence relationship" (FCO website, 13.3.13). Whatever encouragement for reform the UK gave Bahrain, the military links between the two countries undermine those working for human rights. That it should be felt appropriate to discuss the sale of technologies that can be used for surveillance and repression is astounding.

### United Arab Emirates

18. The United Arab Emirates (UAE) does not feature as a FCO country of concern, but the "Democracy Index 2012" classifies it as an authoritarian regimes and ranks it at 149 out of 167. Human Rights Watch's "World Report 2013" says: "The human rights situation in the United Arab Emirates (UAE) worsened in 2012 as authorities arbitrarily detained and deported civil society activists, and harassed and intimidated their lawyers... The UAE intensified its campaign to silence critics of its ruling elite."

19. The UK government is helping BAE sell 60 Eurofighter jets to the UAE, which was included in David Cameron's November 2012 arms sales trip to the Middle East. From 30th April to 1st May 2013, the ruler of the UAE, Sheikh Khalifa, was welcomed by the Queen on a state visit to the UK. BAE's Chief Executive Ian King was a guest at the lunch for the Sheikh at Windsor Castle. Again, it seems, human rights are overlooked in favour of arms export promotion.

### Libya

20. Libya remains both a "country of concern" and a UKTI DSO priority market. Despite continuing security problems, on 3rd April 2013, the Royal Navy frigate HMS Kent was in Tripoli to host a "Defence and Security Industry Day"—a floating arms fair—organised by UKTI DSO. Eleven companies were there including Babcock International, BAE, General Dynamics, Thales and Ultra (Hansard, 19.3.13 plus update). The UK Defence Secretary Philip Hammond arrived in Tripoli prior to the event to discuss "cooperation in the fields of military and security" and opened the arms fair. (Libyan Embassy in London, 3.4.13)

21. Prior to the event, a UKTI official was reported as saying that "training was at the forefront of the services on offer", stating that "To go from having no Typhoons to Typhoons is quite a significant step and one that will take some time". (The National, 24.3.13)

22. Earlier, in December 2012, Ken Clarke, Minister Without Portfolio, led a multi-sector trade delegation to Libya which included arms companies BAE, General Dynamics UK, and Ultra Electronics (Hansard, 14.1.13). A reception was attended by the Libyan Defence Minister Mohammed Al-Bargati (Libya Herald, 4.12.12).

### Syria

23. The pressure by the UK government to lift the arms embargo on Syria so that it can arm elements of the opposition is of grave concern. It is regrettable that supplies of "non-lethal" military equipment as well as training have already been provided to some anti-Assad forces. These forces are largely an unknown quantity, consisting of many different groups, including those of a highly sectarian nature. Many have themselves been accused of human rights abuse.

24. More arms in the country is the last thing the people of Syria need and such a military-focused response would likely serve only undermine efforts to negotiate a solution and to protect civilians. At this stage it is impossible to say what power structures will emerge on either side or what form future governing bodies will take. Supplying arms to any group will increase future instability. Arming rebel and opposition groups will have unforeseen long-term consequences for Syria and the region, as, once the arms have been supplied, there is no way to take them back.

25. The UK government should also place pressure on Russia and other supplier countries to stop supplying weapons to the Syrian government, and to end any official UK government relationship with Rosoboronexport (the Russian export corporation) and other agencies that supply arms to Assad. It should also ensure no weaponry supplied to third countries, such as Saudi Arabia or Qatar, is sent on to any faction within Syria and that pressure is placed on countries giving military support to anti-Assad militias, overtly or covertly, to end such support and supplies.

### Unmanned aerial vehicles

26. Drone attacks are of major human rights concern, as, even when the victim is the target, this is the death penalty (which the UK has, rightly, long opposed) imposed without a trial. Iraq, Afghanistan, Pakistan, Libya, Yemen and Somalia have all suffered strikes by US or UK unmanned aerial vehicles (or drones) controlled from thousands of miles away. Palestine has been subject to Israeli drone strikes. While official claims are made for the accuracy of the strikes, there have been high numbers of civilian casualties besides the intended victim.

27. After buying three Reapers from the US company General Atomics, the UK began using armed drones in Afghanistan in October 2007. These drones were operated via satellite from US Air Force bases outside Las Vegas, but control moved to RAF Waddington in Lincolnshire in April 2013. On 1st January 2013 the UK Ministry of Defence said that UK Reapers had undertaken 363 armed attacks in Afghanistan since 2008.

28. As well as armed drones, the UK has several types of surveillance and targeting drones, most notably Watchkeeper drones being produced by the Israel company Elbit and Thales UK. The first ten were built in Israel, but production is transferring to Leicester with testing taking place in Aberporth. They are due to enter service in 2013.

### Arms trade treaty

29. The arms trade treaty agreed at the United Nations on 2nd April 2013 is unlikely to have any impact on arms exports, not least because it talks about "the legitimate political, security, economic and commercial interests (our emphasis) ... in the international trade in conventional arms." The FCO's Arms Export Policy Department reiterated this saying the treaty recognises states' "legitimate interests in producing, exporting, and importing weapons. International industrial collaboration in arms production will be promoted through the introduction of common standards." UK arms sales to Saudi Arabia's repressive rulers and Russia's to Syria's President Assad seem likely to continue unabated. Yet again, the commercial interests of the arms companies are put before human rights.

30. That the arms trade treaty is unlikely to prevent arms sales to countries of human rights concern was highlighted by the tweets of Michael Aron, the UK's ambassador to Libya, on 2nd April 2013 as the UK's floating arms fair on HMS Kent arrived in Tripoli. He tweeted: "Fantastic news—UN passes historic arms trade treaty by huge majority" followed by "HMS Kent in Tripoli this evening. Thanks to the Captain & crew for a great party (even without alcohol!)" and "UK Minister for Int Security in Libya had a good meeting with Defence Min and Chief of Staff." He obviously did not see the conflict between the promotion of arms sales and the promotion of human rights.

### Private military and security companies

31. The FCO's 2012 Human Rights and Democracy report does not mention "corporate mercenaries", now known by their more respectable title of private military and security companies (PMSCs). The activities of such companies, many based in the UK, has, over the years, given rise to major human rights concern. The FCO has been actively working on the issue in the past year—work around which there is cause for disquiet.

32. In 2010, the UK government decided against regulation of PMSCs, instead deciding on a self-regulation scheme. It announced in 2011 it would be co-ordinated by the Security in Complex Environments Group (SCEG) of the arms and aerospace trade association, ADS. At the same time, the UK government became a strong advocate of the International Code of Conduct on Private Security Providers (ICoC), a Swiss government initiative.

33. CAAT, and other campaigning organisations, do not think that the ICoC is a substitute for national regulation, including a ban on combat activities. However, it was felt that the ICoC could increase transparency around PMSCs and help hold PMSCs to account for human rights violations. Companies would be certified, monitored and subject to a grievance procedure.

34. As CAAT understands it, the FCO and SCEG are pushing for an industry-led process, not only in the certification of companies, but also for the monitoring of their activities. They are pressing for an audit of the companies, looking at their management systems but not addressing their impact or performance. There would be no human rights field monitoring.

35. It is astonishing that PMSC personnel holding weapons and potentially killing people are not regulated by the state. However, the new FCO moves regarding the ICoC take the whole concept of self-regulation to a

new level, with a total lack of independent scrutiny. It lacks all accountability. CAAT hopes your Committee can raise this with the FCO and revisit the PMSC issue.

*22 May 2013*

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## Written evidence from UNICEF

### 1. Summary of recommendations

1.1 The FCO should accord greater attention to child rights within its work to promote human rights overseas.

1.2 The Government should prioritise the publication of its long-awaited strategy on Business and Human Rights and ensure that it pays particular attention to children's rights because of the significant potential for irreversible harm to be done during childhood.

1.3 The Government should ensure that the strategy on Business and Human Rights meets the standards set out in the General Comment on Child Rights and Business and use this as a framework for implementing the Convention on the Rights of the Child as a whole with regard to the business sector.[81]

1.4 The strategy on Business and Human Rights should reference key tools for businesses to use in assessing their impact on child rights, such as the Children's Rights and Business Principles (CRBP).

1.5 Government departments should actively press their corporate partners, contractors and suppliers to demonstrate evidence of compliance with international human rights regulations and standards, including those relating to child rights.

1.6 The Government should consider linking provision of Government procurement opportunities, investment support and export credit guarantees to UK businesses' human rights, and children's rights, records overseas.

### 2. Introduction

2.1 UNICEF, the United Nations Children's Fund, is mandated by the UN General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the UN Convention on the Rights of the Child (CRC) and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

2.2 The UK National Committee for UNICEF (UNICEF UK) welcomes the opportunity to submit evidence to the Foreign Affairs Committee's (FAC) inquiry into the human rights work of the Foreign and Commonwealth Office (FCO).

2.3 UNICEF UK welcomes the publication of "Human Rights and Democracy: the 2012 Foreign and Commonwealth Office Report" (the 2012 Report), particularly the written commitment to consider children's rights as an integral part of the FCO's wider international human rights agenda.

2.4 This submission focuses on how the Government's forthcoming strategy on Business and Human Rights should define the relationship between the FCO's human rights work and the promotion of UK economic and commercial interests in UK foreign policy.

2.5 In addition, we fully support and endorse the evidence and recommendations laid out in the Bond Child Rights Group's submission to the FAC's inquiry. In particular we are concerned that the 2012 Report does not cover children's rights comprehensively, but rather reports sporadically on a small number of individual rights, such as education.

2.6 We are further concerned that despite the recommendation of the Foreign Affairs Committee to the FCO to "undertake urgent work to address negative perceptions among voluntary sector groups of its commitment to children's human rights abroad",[82] the Bond Child Rights Group considers the 2012 Report to lack any tangible progress on the indicators below:

- the lack of a child rights-focused member of the FCO's Human Rights Advisory Panel;
- the expiration of the FCO's child rights strategy and the decision not to renew or replace it;
- the lapse of the Child Rights Panel; and
- the FCO's position that its "centrally-driven human rights priorities do not include child rights."[83]

As stated in the Bond Child Rights Group's submission, it is imperative that these factors are addressed, and greater priority accorded to child rights within the FCO's human rights work.

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[81] General Comment on State obligations regarding the impact of the business sector on children's rights http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-16_en.doc

[82] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/116/116.pdf

[83] FCO response to the Foreign Affairs Committee Inquiry into the FCO's human rights work in 2010–11.

## 3. Business and Child Rights

3.1 UNICEF UK welcomes the information on business and human rights provided in the FCO's 2012 Report on Human Rights and Democracy, in particular the commitment to publish a national strategy to implement the UN Guiding Principles on Business and Human Rights in early 2013.

3.2 The Business and Human Rights Strategy was originally due in mid-2012. UNICEF UK urges the Government to prioritise the publication of this strategy and avoid any further delay. The strategy provides an excellent opportunity for the UK Government to show leadership in an area in which there is tremendous international interest, from other States, businesses and civil society.

3.3 The strategy has the potential to provide much needed clarity across Whitehall departments. It is vital that all government departments take the same approach in ensuring a high regard for human rights is upheld no matter what economic and commercial interests are being promoted.

3.4 UNICEF UK hopes that the strategy will signpost key tools and initiatives which can assist companies in respecting human rights. However, for the strategy to be credible, it must go beyond describing current practice and promoting voluntary initiatives. The UK Government must stick to the "smart mix" of policy, guidance and appropriate regulation set out in the Guiding Principles, not water it down. A re-labelling of the existing status quo will not be sufficient. As well as a missed opportunity, it would be a fundamental misinterpretation of the Guiding Principles.

3.5 The strategy should establish a process for identifying key pieces of legislation which require businesses to respect human rights, and set out a timetable for assessing whether these laws are adequate and addressing identified gaps. It should also set out measures that will ensure new legislation and policies do not constrain but enable business respect for human rights.

3.6 Continuous child-rights impact assessments are critical to ensuring that the best interests of the child are a primary consideration in business-related legislation and policy development. These can predict the impact of any proposed business-related policy, legislation, regulations, budget or other administrative decisions which affect children and the enjoyment of their rights[84] and should complement ongoing monitoring and evaluation of the impact of laws, policies and programmes on children's rights.

3.7 The UN Guiding Principles set out that businesses should respect the rights of people belonging to "specific groups or populations that require particular attention", with a specific mention of children.[85] They direct businesses to address their most severe human rights impacts as well as those impacts where the harm will be irreversible if action is delayed.[86]

3.8 In this context, UNICEF UK urges the UK Government to pay full attention to the rights of children in relation to the UK's implementation of the UN Guiding Principles. We were disappointed to see that the 2012 Report does not reference child rights within its section on "Human Rights in Promoting Britain's Prosperity".[87] We would like to draw the Committee's attention to the importance of recognising child rights as distinct from "human rights" more broadly.

3.9 Proper consideration of child rights as they relate to business involves recognising children (at home and abroad) as stakeholders of business across the full spectrum of a company's operations—from their products, services and marketing, through to their relationship with employees and governments, their investment in local communities and their impact on the environment in which children live.

3.10 It is vital for businesses to consider how their operations impact on children because childhood is a period when children's physical, mental and emotional well-being can be permanently influenced, with consequences for the future economic development of developing countries. To give some examples, poor nutrition at an early age can impede a child's growth, health and behavioural development for the rest of their lives. Missing a period of education because of disruption to their community or environment can be critical to a child's long term educational achievements. Exposure to a pollutant can be far more harmful to a child than to an adult, owing to children's developing immune systems and higher skin surface area in relation to their body weight.

3.11 It is also important for the UK Government to understand the linkages between business and child rights if further progress is to be made towards the UN Millennium Development Goals. In many developing and low-income countries, children constitute around half of the population. Children and young people also make up the overwhelming majority of those affected by poverty, yet they have the least capacity to support or protect themselves. While governments have the ultimate duty to protect, respect and fulfil children's rights, the private sector has enormous potential to affect children's lives, positively and negatively, at home and abroad.

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[84] General comment No. 5, para. 45 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/455/14/PDF/G0345514.pdf?OpenElement

[85] Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Commentary on Principle 12, http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf

[86] Ibid, Principle 24

[87] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/186688/Cm_8593_Accessible_complete.pdf

3.12 The UK Government should encourage a business culture that understands, respects and supports children's rights. To achieve this, the Government should develop guidance that explicitly sets out government expectations for business enterprises to respect children's rights in the context of its own business activities, as well as within business relationships linked to operations, products or services and activities abroad when they operate globally.

3.13 UNICEF UK would like to draw the attention of the Committee to the Children's Rights & Business Principles (CRBP).[88] The CRBP takes a more comprehensive approach to business and child rights than previous initiatives. It sets out ten guiding principles to enable businesses to understand and address their impacts on the rights and well-being of children, and calls on businesses to give explicit consideration to children's rights across the full spectrum of their corporate functions. It is precisely the sort of tool which could be promoted to UK businesses to ensure that a child rights perspective is taken on board in their human rights assessments.

3.14 The 2012 Report states that the Business and Human Rights toolkit has been updated to include the FCO's work on the UN Guiding Principles.[89] According to the FCO, the toolkit "helps our embassies and high commissions to engage on this issue with host governments and business. We also updated government training for trade and commercial officers working in the UK and overseas to place greater emphasis on respect for human rights."[90]

3.15 UNICEF UK notes the lack of any reference to child rights in the revised toolkit. This suggests a lack of understanding of how businesses have the potential to cause lasting damage to children's lives if they do not make a comprehensive assessment of how their operations impact on children's rights. **The UK Government must ensure that its new strategy on Business and Human Rights pays particular attention to child rights because of the potential for irreversible harm during childhood.**

3.16 UNICEF UK also believes that **the new strategy on Business and Human Rights should reference key tools for businesses to use in assessing their impact on child rights, such as the CRBP.**

3.17 UNICEF UK notes that the 2012 Report refers to "business" without distinguishing between companies that work directly with government and those which do not. At a time when both the FCO and the Department for International Development (DFID) are strategically scaling up their work with corporate partners,[91] it seems reasonable that government departments should explicitly require, rather than simply "encourage", good corporate behaviour from their partners. **Government departments should actively press their corporate partners, contractors and suppliers to demonstrate evidence of compliance with international human rights regulations and standards, including those relating to child rights.**

3.18 UNICEF UK also believes that **the Government should consider linking provision of Government procurement opportunities, investment support and export credit guarantees to UK businesses' human rights, and children's rights, records overseas.**

3.19 The way in which the new strategy will be monitored and reviewed will be critical to its effectiveness. A multi-stakeholder, independent, body with expertise on business and human rights, including child rights, should be established as part of the implementation of the strategy, with the authority to monitor how the strategy is being implemented across all government departments, and to publish its findings at set intervals.

3.20 UNICEF would like to draw the attention of the Committee to the recently published General Comment on State obligations regarding the impact of the business sector on children's rights.[92] The Committee on the Rights of the Child is first UN human rights treaty body to address this issue directly in a General Comment. The General Comment is an authoritative interpretation of the Convention on the Rights of the Child (CRC) and the Optional Protocols with regard to the responsibility of States parties to provide protection, ensure respect for and remedy abuses of child rights that may arise from the actions or omissions of business enterprises and multinational companies.

3.21 It provides States with a framework for implementing the Convention with regard to the business sector in key areas, including on how States should ensure that the activities and operations of business enterprises do not adversely impact on children's rights; how to create an enabling and supportive environment for business enterprises to respect children's rights including across any business relationships linked to their operations, products or services and across their global operations; and, how to ensure access to effective remedy for children whose rights have been infringed by a business enterprise.

3.22 According to the General Comment "States are obliged to integrate and apply the principle of "best interests of the child" in all legislative, administrative and judicial proceedings concerning business activities

[88] See http://www.unicef.org.uk/csr The CRBP is the result of a joint initiative by UNICEF, the UN Global Compact and Save the Children, and were developed in active and detailed consultation with business experts, child rights experts, civil society, governments and children.

[89] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/186688/Cm_8593_Accessible_complete.pdf

[90] Ibid

[91] According to their 2011–2015 business plans. The FCO's business plan states its aim to "achieve a more commercially minded FCO" while DFID has set out its thinking in "The engine of development: The private sector and prosperity for poor people", DFID paper, May 2011.

[92] General Comment on State obligations regarding the impact of the business sector on children's rights http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-16_en.doc

and operations that directly or indirectly impact on children."[93] In this context, the UK Government must ensure that the best interests of the child are central to the development of legislation and policies relating to employment, taxation, corruption, privatisation, transport and other general economic, trade or financial issues.

3.23 The General Comment also makes clear that States are obliged to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises. Meeting this obligation requires having in place child-sensitive mechanisms that are known by children and their representatives, that are accessible and that provide adequate reparation for harm suffered.

3.24 **The Government should ensure that the strategy on Business and Human Rights meets the standards set out in the General Comment on State on Child Rights and Business and use this as a framework for implementing the Convention on the Rights of the Child as a whole with regard to the business sector.**

*22 May 2013*

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## Written evidence from BOND

### I. Summary

i. The Bond Child Rights Group welcomes the publication of "The Human Rights and Democracy: the 2012 Foreign and Commonwealth Office Report" (the 2012 Report), particularly the specific commitment to consider children's rights as an integral part of the FCO's wider international human rights agenda.[94]

ii. However, we are concerned that the 2012 Report does not cover children's rights comprehensively, but rather reports sporadically on a small number of individual child rights issues, such as education. Including the full spectrum of children's rights is necessary if the Report is to be considered an accurate and comprehensive tool measuring human rights. One example of failing to take a comprehensive approach is the absence within the Report of assessments made of violence, exploitation and abuse against children which we know from NGO reports is ongoing across the countries of concern identified within the 2012 Report.

iii. In its submission to the FAC's Inquiry into the 2011 FCO Report, the Bond Child Rights Group noted several indicators showing the de-prioritisation of children's rights. These were:

- the lack of a child rights-focused member of the FCO's Human Rights Advisory Panel;
- the expiration of the FCO's child rights strategy and the decision not to renew or replace it;
- the lapse of the FCO's Child Rights Panel; and
- the FCO's position that its "centrally-driven human rights priorities do not include child rights."[95]

Despite the FAC's recommendation that the FCO should "undertake urgent work to address negative perceptions among voluntary sector groups of its commitment to children's human rights abroad",[96] the Bond Child Rights Group considers the 2012 Report to lack any tangible progress on the above indicators and, disappointingly, to be a confirmation of the FCO's failure to prioritise children's rights. Given that children constitute the majority of the population in many of the countries of concern and are often the most vulnerable to human rights abuses, there is a strong case for a greater prioritisation of child rights.

iv. On the point of the lack of child rights specific expertise and focus within the Advisory Panel, something which could help to ensure that children's rights are given adequate and specific consideration in the FCO's broader human rights work, the FCO committed to consider extending the membership of the Panel to include a child rights expert as part of a review of the Panel. Disappointingly, there has been no progress on this issue and we are unaware of any further details about the status of the review of this group.

### II. Introduction

i. The Bond Child Rights Group is a network of 30 UK NGOs,[97] research organisations and other stakeholders concerned with the realisation of children's rights worldwide. Our goal is to see children and their rights accorded greater priority in the UK Government's international development and foreign affairs policies and practices, in line with HMG's obligations in this area as a signatory to the UN Convention on the Rights

[93] General Comment on State obligations regarding the impact of the business sector on children's rights http://www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-16_en.doc

[94] The FCO's response to the FAC Recommendations from the inquiry into the FCO's human rights work in 2011 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/37008/Response_to_FAC_Recommendations_PDF_doc.pdf

[95] The Bond Child Rights Group's submission to the FAC inquiry into the FCO's human rights work in 2011

[96] http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/116/116.pdf

[97] Members of the Bond Child Rights Working Group include the following organisations: AbleChildAfrica, Absolute Return for Kids, ActionAid International, Anti-Slavery International, Child Rights Programming: Training and Consultancy, Child to Child Trust, ChildHope, Children in Crisis, Children's Rights Alliance for England, Consortium for Street Children, Coram Children's Legal Centre, EveryChild, Hope and Homes for Children, International Children's Trust, Jubilee Action, Keeping Children Safe Coalition, Leonard Cheshire Disability, Medical Aid for Palestinians, Overseas Development Institute, PhotoVoice, Plan UK, Railway Children, Right To Play, Save the Children, StreetInvest, Tearfund UK, UNICEF UK, WarChild, World Vision UK, and Young Lives.

of the Child (UNCRC). We are committed to a rights-based approach where children are viewed as rights-holders with distinct needs and interests who require special protection and support. We are guided by international standards and norms, including the CRC, and we are committed to highlighting ways in which HMG can better meet its international obligations in this area.

ii. Our vision is for a world in which children are empowered as equal partners in promoting development, democracy, peace and social justice. We believe that children have the right to participate in decisions that affect them, their families, communities and nations. Furthermore, we believe that children are a catalyst for transforming societies and an essential asset for all efforts to address urgent global development and foreign affairs issues and challenges.

iii. In accordance with the UNCRC, the UK is required to develop policies and undertake all actions (including for international development and foreign affairs) in light of the best interests of the child[98] and to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention."[99] Crucially, this includes the work of the FCO. Therefore, in line with our interest in encouraging HMG to meet its obligations under the UNCRC, the Group welcomes the opportunity to submit evidence to the Foreign Affairs Committee's inquiry into this 2012 Report.

## III. The Content and Format of "Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report"

i. We welcome the UK Government's commitment to supporting the Special Representative of the Secretary-General on violence against children and on the prevention and elimination of all forms of violence against children. We urge the UK Government to commit predictable funding arrangements to the UN offices of Violence Against Children and Children Affected by Armed Conflict, that are commensurate to the scale of the issues children face globally. We welcome the £150,000 allocation committed at the G8 Foreign Ministers Meeting in April to the UN SRSG on Children Affected by Armed Conflict, but we call for greater budget allocation on a 5 year funding cycle that would provide reliable support to enhance the effectiveness of these UN offices, including towards their fight to reduce sexual violence in conflict, in line with the PSVI.

ii. We were also pleased to see the UK Government mark the first International Day of the Girl Child in October 2012. This day also saw the UN call for the end of child marriage, a child rights violation to which the UK Government are rightly committed to ending and which is mentioned in a number of sections in the FCO's 2012 Report. However, we also note with concern the decision to remove Chad from the list of countries of concern in the Report, and highlight both the exceptionally high prevalence of child marriage in Chad,[100] as well as the existence of child soldiers. We urge the FCO to recognise the interconnectedness between child rights violations such as early marriage, and the protection of children more widely, and to broaden their focus from a limited number of specific issues towards the full provisions which relate to the protection of children in the UNCRC.[101]

iii. We welcome and support the FCO's focus on women's rights, as highlighted in the 2012 Report. However, we urge the FCO to recognise the interdependence between women's rights and children's rights, and specifically the rights of girl *and* boy children. We also urge the FCO to consider including the empowerment of girls within their overarching priority of tackling gender equality and women's empowerment.

iv. We acknowledge the FCO's commitment to include information on children's rights issues in the countries of concern section of the Report. However, we note that children's rights are not systematically considered in all the countries of concern. We note the absence of any analysis of children's rights in the sections on Belarus, China, Cuba, Fiji, Iran, Iraq, Libya, Pakistan, Russia, Somalia, South Sudan, Turkmenistan and Zimbabwe. Iraq is of particular and critical concern due to the acute insecurity that has seen hundreds of children killed and targeted in 2012. We acknowledge that the FCO has briefly included activities related to the support of child victims of armed conflict in the 2012 Report in relation to Afghanistan, Burma, Colombia, the Democratic Republic of Congo, the Occupied Palestinian Territories, Sudan, Syria and Yemen. However, we consider that the commitment to report on FCO activities has been made at the expense of reporting on the situation of children's rights in countries where there are no FCO activities relating to children, but where children's rights abuses are still of grave concern. For example, we note the absence of any inclusion on the issue of children affected by armed conflict in Pakistan, Iraq, Central African Republic, Somalia and South Sudan, which are all either countries affected by conflict or post-conflict where the rights of children are significantly impacted, and are included in the Report's Countries of Concern. We ask the FCO to take a consistent approach to reporting on the situation of children's rights in all countries of concern within the Report; the presence of child rights violations should be a key criteria for countries listed under this section. The analysis of children's rights within this section should also guide the UK Government's engagement in each of these countries, thereby identifying and taking steps to address gaps in child rights implementation. We urge the FCO to include consistent analysis of the situation of children's rights in countries of concern in the Report, irrespective of the relevant activities the FCO are undertaking in response.

[98] Article 3 of the UNCRC
[99] Article 4 of the UNCRC
[100] UNICEF State of the World's Children 2012 note that 72% of women aged 20–24 years in Chad were first married or in union before the age of 18.
[101] Article 19 of the UNCRC

v. We urge the UK Government to sign and ratify the Third Optional Protocol (OP3) to the UNCRC, not least in order for it to enter into full force. We consider the OP3 to be a critical tool to reinforce the importance of domestic responses to child rights abuses and therefore within the interests of HMG to support and champion. We urge the UK Government to take a leading role amongst the international community in prioritising the promotion of children's rights through communication and inquiry, and the accountability of governments to protect the rights of children within their borders. We also understand that the UN Committee on the Rights of the Child is satisfied that it has the resources to implement OP3 and that any delay in ratifying it on account of resources for its implementation is misplaced. We therefore urge the UK to take the opportunity at the UN General Assembly in September to ratify the OP3.

vi. The Bond Child Rights Group believes that the 2012 Report's commendable focus on children affected by armed conflict, child marriage and harmful traditional practices such as FGM/C, warrants the appointment of a specific child rights expert to the FCO's Human Rights Advisory Panel. It further warrants a cross-Whitehall strategy which aligns the approach of HMG to improving child rights in all its international development and foreign affairs work.

## IV. The 11 April Declaration by G8 Foreign Ministers on the Prevention of Sexual Violence in Conflict, and the Impact of the FCO's Preventing Sexual Violence Initiative

i. The Bond Child Rights Group welcomes the Prevention of Sexual Violence Initiative (the PSVI) and recognises the leadership role taken by the FCO in championing the cause of tackling sexual violence in conflict amongst G8 leaders. We particularly welcome the acknowledgement that children, including boys and girls of all ages, are victims of sexual violence in conflict. The Foreign Secretary made the point that prosecution of criminals is central to the PSVI.[102] We support the decision for this to be done by a pool of UK experts building the capacity of local actors such as the police, investigators and medical practitioners in gathering evidence to secure convictions. However, little is being done to ensure the safety of child victims and witnesses to enable them to testify against perpetrators without fear of reprisals. The PSVI should include safe houses for victims, admission of pre-recorded testimony, access to child rights advocates (trusted adults) or even paralegals to support them before, after and during trials.

ii. The 11th April Declaration[103] by G8 Foreign Ministers rightly emphasises the need to ensure that prevention and protection efforts are included in the first phase of all responses in conflict and humanitarian settings, including some mention of the protection and promotion of children's rights. However, the Declaration does not indicate how this will be achieved. The FCO must ensure that steps are put in place in order that such interventions are supported from the outset of a conflict and through early warning systems prior to conflict breaking out. We urge the FCO to commit to sending sexual violence experts as part of their own emergency first response teams, who are trained in child protection and have specific expertise working with child survivors. We also call for the FCO to impose conditionality of funding to peacekeeping forces and Missions on the hiring of sexual violence and child protection experts and training of peacekeepers in child protection. Furthermore, the UK should use the momentum of the G8 to push for UN Security Council members to ensure resolutions on peacekeeping missions include clear, strong child protection mandates.

iii. The Bond Child Rights Group supports the acknowledgement by the Declaration of the need for a comprehensive approach to health, psychological, legal and economic support for survivors of sexual violence. However, in order for the declaration to be implemented successfully in practise there must be a holistic approach through the "spectrum" of conflict. We urge the FCO to call on G8 partners to fund a multilateral pilot in order to identify the ideal range of activities across the continuum of protection and to establish coordination mechanisms for implementing these activities. This should build on local civil society and government/community structures (to include interventions across "stages"-prevention, protection, prosecution and response/rehabilitation).

iv. To reduce sexual violence against children, the FCO and its partners must address the lack of safeguarding procedures within its operations. The FCO lacks a policy for safeguarding children[104] that explicitly details appropriate and inappropriate forms of behaviour and reporting procedures in the event of concerns that may arise. UK Government departments which deliver services to children within the UK are required to adhere to a safeguarding policy to ensure the protection of children. FCO are delivering services to children around the world both directly and through their partners. The Bond Child Rights Group considers the international environment to be no different and calls for comparable standards to be met. We consider the failure of the FCO to own a safeguarding policy to be an oversight of their responsibility to safeguard children.

## V. Summary of Recommendations

i. The FCO should award greater priority to child rights within its human rights work with priority based on need and vulnerability alone, with recognition that children constitute the majority of the population in many of the countries of concern and are often the most vulnerable to human rights abuses. Furthermore, failing to

[102] https://www.gov.uk/government/news/g8-declaration-on-preventing-sexual-violence-in-conflict
[103] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/185008/G8_PSVI_Declaration_-_FINAL.pdf
[104] With the exception of CRB checks with are taken at the time of recruitment.

address the rights of children contributes to negative cycles of violence and conflict. Greater priority could be demonstrated by:

- The urgent adoption of a child rights strategy. Such a strategy would complement the commitment by the FCO to individual children's rights issues such as children affected by armed conflict and child marriage;
- Engagement with child rights groups to ensure the situation of children's rights is represented to the FCO and the FCO has support on responding to these issues;
- The inclusion of a child rights expert on the FCO's Advisory Group on Human Rights.

ii. The FCO should include the empowerment of girls within their overarching priority of tackling gender equality and women's empowerment.

iii. Future reports should consistently include and consider the situation of children's rights for all countries of concern regardless of the level of activities of the FCO on children's rights in that particular country. This analysis should inform the FCO's strategy and approach in each country, for both its own activities and its engagement with national governments.

iv. The UK Government should sign and ratify the Third Optional Protocol (OP3) to the UNCRC, taking the opportunity to ratify the OP3 at the UN General Assembly in September, in order for the UK to then be considered a global leader in promoting accountability in upholding children's rights and advocate for national governments to do so as well.

v. The PSVI should support the protection of children against sexual violence and ensure age and child-sensitive provision across all phases (from prevention through to reintegration). This should be realised through the funding and inclusion of child protection within peacekeeping and humanitarian response. The FCO should ensure the implementation of the G8 declaration in relation to all commitments relating to children through the UN, G8 and multilateral partners, building on local structures and not limited to prosecutions. Efforts must also be made to ensure the safety of child victims and witnesses to enable them to testify against the perpetrators of sexual violence within conflict without fear of reprisals, and with the appropriate and necessary protective measures and support systems in place.

vi. The FCO must establish a policy to safeguard children that clearly spells out appropriate and inappropriate forms of behaviour and reporting procedures in the event of concerns that may arise.

*24 May 2013*

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## Written evidence from Pavel Khodorkovsky

### 1. Summary

1.1 *I welcome the Select Committee investigation into the FCO's human rights work in 2012 along with the content of the FCO's report "Human Rights and Democracy".*

- I agree with its observations on Russia, and the continued inclusion of Russia as a country of concern.
- I draw to the Select Committee's attention recent developments in the case of Mikhail Khodorkovsky, and recommend that the committee closely monitors these developments while raising human rights issues, including the Khodorkovsky case, in both ministerial and departmental meetings with Russian counterparts.
- I recommend that the FCO consider the upcoming tenth anniversary of Mikhail Khodorkovsky's imprisonment to be an opportunity to remind the Russian government that Khodorkovsky is due to be released in October 2014 and that it expects to see him released no later than this date.
- I recommend that future in-country reports provide a translation into the respective national languages to aid understanding and distribution.
- I welcome the inclusion of a link to an Overseas Business Risk report on UKTI's Doing Business in Russia page and recommend that ministers are briefed on human rights issues in Russia and instructed to raise those concerns from the perspectives of their own department.
- I recommend that in order to avoid the Sochi Winter Olympics in 2014 being used by Russia as a diversion from its human rights record, ministers and officials attending the games should be briefed on human rights in Russia.

1.2 This evidence is submitted by Pavel Khodorkovsky, President of the New York based think tank, the Institute of Modern Russia,[105] and son of Mikhail Khodorkovsky, former head of the Yukos Oil Company and Amnesty International declared "Prisoner of Conscience".[106]

[105] http://imrussia.org/

[106] Russia: Khodorkovsky & Lebedev are Prisoners of Conscience, Amnesty International, http://www.amnesty.org.uk/news_details.asp?NewsID=19477

## 2. Background and Updates to the Khodorkovsky Case

### 2.1 *Prosecution of Khodorkovsky*

2.11 My father, the Russian businessman and philanthropist, Mikhail Khodorkovsky, was declared a "Prisoner of Conscience" by Amnesty International[107] following two politically motivated trials against him. His prosecution and imprisonment have been seen as a watershed event demonstrating the limits of freedom and democracy in Russia today.

2.12 As the Chief Executive of Yukos, Khodorkovsky was heavily involved in public philanthropy and civic society; among his many projects were the creation of Open Russia, dedicated to promoting civil society values and running educational projects for Russian youth, including building a school for underprivileged orphans which continues to operate to this day.

2.13 In October 2003 Khodorkovsky was travelling across Russia's regions delivering speeches on democracy and calling on Russian youth to become politically engaged when he was arrested on politically motivated charges that retroactively asserted violations of tax and privatisation laws.[108] This October will therefore mark the tenth anniversary of his imprisonment.

2.14 There were two widely-accepted central motives behind his prosecution: to eliminate him as a political opponent and to seize control of Yukos—increasing the Kremlin's power and enriching certain state officials.

2.15 Khodorkovsky and his business partner Platon Lebedev were found guilty on May 31, 2005 and were sent to Siberia to serve eight-year prison sentences. By October 2007, both Khodorkovsky and Lebedev would have been eligible for release on parole, but in February 2007, new charges emerged of embezzling the entire oil production of Yukos and laundering the proceeds, directly contradicting the existing court ruling of 2005 against the two men.[109]. A second trial against them was held from March 2009 to December 2010.

2.16 In December 2010, days before the verdict in the second trial, then-Prime Minister Vladimir Putin said on television, (in reply to a question about Khodorkovsky), that "*a thief should sit in jail*".[110] Later that month, Khodorkovsky and Lebedev were found guilty and sentenced to a total of 14 years in prison, triggering widespread condemnation in Russia and the West, most notably, from the US, UK, EU, France and Germany.[111] The sentence was reduced on appeal by one year, pushing their release date to 2016. Khodorkovsky was sent to a remote penal colony in north-western Russia, near the border with Finland.

### 2.2 *Seizure of Yukos*

2.21 After Khodorkovsky's incarceration, the Russian authorities set about expropriating Yukos assets. In December 2003, the Tax Ministry launched the first of what would become a series of extraordinary audits of Yukos's tax payments, resulting in the company's assets being sold at knockdown prices. As a result, the state controlled company Rosneft transformed itself from a company worth just $6 billion, into Russia's biggest oil producer, with a market capitalisation of $90 billion—having spent a mere net $2 billion in the process.[112]

2.22 Yukos shareholders received no benefit in the bankruptcy process—as all Yukos's liabilities were rigged in line with the fire sale prices. American investors lost approximately $7 billion and the illegal expropriation of Yukos is now the subject of numerous legal proceedings around the world.

2.23 Divested of his interests in Yukos after being incarcerated, Khodorkovsky is not involved in any litigation to secure the restoration of or damages for the expropriated Yukos assets.

### 2.3 *Updates on the Khodorkovsky case*

2.31 Following the second trial, after two years of obstruction and delays a supervisory appeal hearing finally took place at the Moscow City Court on December 20, 2012. The ruling lacked any thorough judicial analysis of Khodorkovsky's appeal, and despite the enormous weight of legal and factual arguments undermining it, the appeal judges confirmed the December 2010 guilty verdict.

2.32 The hearing did, however, advance Khodorkovsky's release date to October 2014—a total of eleven years since his arrest—due to changes in Russia's sentencing guidelines. The FCO report referred to this reduction, but it remains to be seen whether the authorities will indeed release Khodorkovsky in 2014. It is impossible to rule out the possibility that a new set of trumped-up charges could be concocted to prevent his release. As stated by Amnesty International when designating Khodorkovsky and Lebedev "prisoners of conscience" in May 2011, the two men "have been trapped in a judicial vortex that answers to political not legal considerations" in courts "unable, or unwilling, to deliver justice in their cases."

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[107] *Ibid.*

[108] New York Times, The President and the prisoner, http://www.nytimes.com/2008/05/02/opinion/02iht-edvonklaeden.4.12527934.html?_r=3

[109] http://www.khodorkovskycenter.com/legal-persecution/2007–2011-trial

[110] Economist, The Khodorkovsky trial underlines Putin's power in 2011, http://www.economist.com/blogs/theworldin2011/2010/12/khodorkovsky_trial_underlines_putins_power_2011

[111] http://www.khodorkovskycenter.com/news-resources/stories/leaders-around-world-react-moscow-city-court-rejection-khodorkovsky-lebedev-v

[112] Yukos finally expires, victim of its battle with the Kremlin, The Financial Times, May 11, 2007.

2.33 On May 19, 2013, Russia's Supreme Court announced on its website that it would hear an appeal against the second conviction of Khodorkovsky and Lebedev. The announcement did not specify on what date the hearing would take place, or which part of the December 2010 verdict would be under review. If the history of the proceedings against Khodorkovsky and Lebedev over the past decade is any guide, however, the announcement from the Supreme Court should not raise hopes that they will have a fair hearing. Since the end of the second Khodorkovsky-Lebedev trial, proceedings have been repeatedly unlawfully delayed, or stymied by groundless rulings. Khodorkovsky's defence team filed the current appeal on February 4, 2013. It had previously filed an appeal nearly one year earlier, to no avail. In a statement in February 2013, Khodorkovsky's Russian lawyer, Vadim Klyuvgant, described the year in between as: "A year of judicial red tape, run-arounds, tricks and direct lies. A year lost for movement toward fairness and justice, toward preservation of what's left of the trust in courts. The most terrible thing is that it was yet another, already the ninth, year of imprisonment of the people convicted without guilt under a phony verdict."

2.34 The European Court of Human Rights (ECtHR) currently has before it several outstanding applications from Khodorkovsky.[113] In a first judgment, concerning his initial arrest in 2003 and his detention from 2003 to 2005,[114] the Court found numerous violations of the European Convention on Human Rights.

2.35 In December 2011, former President Dmitry Medvedev's own Presidential Council of the Russian Federation for the Development of Civil Society and Human Rights issued a report on the second Khodorkovsky-Lebedev verdict, finding that "the actions of the convicts [Khodorkovsky and Lebedev] do not constitute either embezzlement or misappropriation" and that the "miscarriage of justice" in the case was so grave and so obvious that the verdict should be "annulled through appropriate legal channels".[115] The Council's report was the fruit of a major inquiry into the case that identified serious and widespread violations of the law, finding that there was no valid legal basis or evidence supporting the guilty verdict, and that the proceedings were severely marred by violations of fundamental human rights. More broadly, the inquiry found that the Khodorkovsky-Lebedev case highlighted widespread systemic problems in Russia's law enforcement practices and judiciary. The inquiry prompted calls for the release of Khodorkovsky and Lebedev, and also for a series of reforms to address the systemic problems illustrated by this case. The authorities dismissed the Council's report, and in recent months senior figures from the Council have publicly stated that experts involved in the inquiry have faced intimidation and harassment.[116] One of the three foreign experts asked to contribute to the Council's inquiry, Professor Jeffrey Kahn, in an article in the New York Times, concluded that, "With Mr Putin back in the Kremlin, it is no longer safe to express an opinion on public affairs, even if that opinion was requested by the state itself."[117]

**Recommendation:** Mikhail Khodorkovsky will this October mark the tenth anniversary of his imprisonment. The FCO should consider this an opportunity to remind the Russian government that Khodorkovsky is due to be released in October 2014 and that the FCO expects to see him released no later than this date.

## 3. Content and Format of the FCO's Human Rights and Democracy Report

3.1 I very much welcome the publication of the FCO's Human Rights and Democracy Report and the greater emphasis the FCO is placing on the importance of human rights in the formulation and execution of foreign policy. The report provides critical support for the work of human rights organisations in Russia and has the capacity to highlight violations beyond what is possible for domestic NGOs, especially given the increasingly aggressive campaign against them by the Russian authorities.

### 3.2 *Country of Concern Report: Russia*

3.21 I welcome Russia's continued inclusion in the FCO report as a "country of concern," the direct references to the Khodorkovsky and Magnitsky cases, amongst others, and the fact the imprisonment of Mikhail Khodorkovsky and Platon Lebedev is described as "having worrying implications for the rule of law in Russia." I also welcome the mention of the meeting between me and my grandmother, and the Deputy Prime Minister, Nick Clegg, and the Deputy Prime Minister's call for "the Russian authorities to strengthen respect for the law, tackle corruption and promote genuine independence of the judiciary."

3.22 I note the reference to the reduction of the jail sentences of Khodorkovsky and Lebedev. This reduction was made by the Moscow City Court on December 20, 2012, and was due to the application of amendments to Russian sentencing law made in 2011. However, the Moscow City Court upheld the verdict in Khodorkovsky's second trial. Klyuvgant commented at the time: "The position of the defence team remains the same: our defendants are innocent and should be released immediately."[118] Nevertheless, if the ruling stands and no additional charges are brought against him, Khodorkovsky will be released in October 2014. It

[113] ECHR application numbers 11082/06, http://www.khodorkovsky.com/legal/international-forums/

[114] ECHR application number 5829/04, http://www.khodorkovsky.com/legal/international-forums/

[115] Presidential Council of the Russian Federation for the Development of Civil Society and Human Rights, http://www.scribd.com/doc/94804946/Presidential-Human-Rights-Council-Report-Feb-2012-Full-Text

[116] http://www.khodorkovsky.com/head-of-presidential-council-comments-on-persecutions-against-independent-experts/

[117] http://www.nytimes.com/2013/02/26/opinion/in-putins-russia-shooting-the-messenger.html

[118] http://www.khodorkovsky.com/judicial-farce-continues-as-moscow-city-court-fails-to-admit-mistakes-in-second-khodorkovsky-lebedev-trial/

is, however, impossible to rule out the possibility that a new set of trumped-up charges could be concocted to prevent his release.

3.23 I welcome the FCO report's citation of the Human Rights Watch analysis that the crackdown against civil society, political opposition and minority groups in 2012 has been "unprecedented in the post-Soviet era." The report rightly refers to "A package of restrictive legislative measures that constrained the environment for civil society, most notably a law requiring many foreign-funded NGOs to register as "foreign agents"."

3.24 In 2013 we have seen the manifestation of those legislative measures. I welcome the statement made by the Minister for Europe, David Lidington, in March regarding "pressure on NGOs across Russia."[119] The targeting of NGOs has continued unabated, however, and so far, hundreds of NGOs have faced searches by the authorities and been forced to register as "foreign agents." These have recently included the elections watchdog, Golos, and Russia's only independent polling centre, Levada, as well as human rights organisations such as Memorial and the Russian branches of several international NGOs such as Amnesty and Human Rights Watch, but have also included charities working in totally apolitical fields such as animal protection.[120] My father has commented from his penal colony regarding the crackdown, writing: "Politically motivated pressure on public organisations is unacceptable. It prevents the flourishing of a civil society which is so essential for Russia's political, economic and also social modernisation."[121] I note also that a precedent for the current crackdown on NGOs exists in the treatment of Khodorkovsky's organisation, the Open Russia Foundation, which promoted a stronger civil society in Russia. The Open Russia Foundation was subjected to a campaign of harassment not dissimilar to that being experienced in Russia today, effectively resulting in its closure in 2006.

3.25 I welcome the section in the FCO's report on freedom of expression and assembly. The section noted the expulsion of the opposition deputy Gennady Gudkov from the Duma. In 2013, his son, Dmitry Gudkov, was accused of treason following his participation in an event held in Washington DC under the auspices of the Foreign Policy Initiative, Freedom House and the Institute of Modern Russia, of which I am the president.[122] The section also mentions the charges brought against opposition activist Alexei Navalny, whose politically motivated trial subsequently commenced. Meanwhile, a number of participants in the lawful, peaceful protest of May 6, 2012, referenced in the report, are currently awaiting trial.

**Recommendation:** Those in the opposition and reform movement in Russia, including NGOs, have limited resources and are facing an intensified campaign of harassment, intimidation and politically motivated abuses of the criminal justice system. To maximise the impact of the country sections of the report, I therefore recommend that they are translated into the respective national languages to aid understanding and distribution. Links to the translated sections of the report should appear on the relevant pages of the FCO's website, allowing information within the FCO report to bypass state-controlled media and reach citizens directly via social media networks.

## 4. Cross Government Strategy on Business and Human Rights

4.1 I welcome the inclusion of a link to an Overseas Business Risk report on Russia[123] on UKTI's doing business in Russia page, incorporating its more detailed analysis of widespread corruption in Russia, warnings regarding bribery and reference to the Khodorkovsky case.[124]

4.2 Nevertheless, I continue to have concerns about the need to give UK businesses clear and balanced advice about the risks of investing and doing business in Russia. The campaign against Khodorkovsky was a seminal event which made clear that in today's Russia the authorities could and would act with impunity outside the law, even in full public view. An alarming string of cases of murder, torture and arbitrary detention of perceived enemies of the regime followed. Meanwhile, state-assisted raiding of businesses that refuse to pay bribes—or that become too successful for predators to resist expropriating them—is now commonplace. Corruption levels are high, with Russia scoring 2.4 out of 10 in Transparency International's worldwide Corruption Perception Index—worse than Iran, Syria, Sierra Leone and Pakistan.[125] One in six[126] Russian entrepreneurs has been on trial and approximately one-fourth of the 900,000 inmates in Russian jails in 2010 were entrepreneurs, accountants, legal advisers, and mid-level managers—many of whom were victims of abuse of the criminal justice system through fabricated cases.

4.3 I note also the completion of the multi-billion dollar deal between BP and Rosneft and remind the committee that Rosneft itself is in large part "the product of assets appropriated—if stolen is too strong a word—from Yukos, whose ex-boss Mikhail Khodorkovsky wound up in jail."[127]

[119] https://www.gov.uk/government/news/foreign-office-concerned-about-russian-ngo-pressure
[120] http://www.hrw.org/sites/default/files/reports/russia0413_ForUpload_0.pdf
[121] http://www.khodorkovsky.com/wp-content/uploads/2013/05/Letter-Memorial-English.pdf
[122] http://www.nytimes.com/2013/03/16/world/europe/russian-legislator-accused-of-treason-after-us-visit.html?pagewanted=all&_r=1&
[123] http://www.ukti.gov.uk/export/countries/europe/easterneurope/russia/overseasbusinessrisk.html
[124] http://www.ukti.gov.uk/export/countries/europe/easterneurope/russia/doingbusiness.html
[125] http://cpi.transparency.org/cpi2011/results/
[126] http://www.usatoday.com/video/study-1-in-6-russian-businessmen-have-faced-prison/1550819075001
[127] http://www.telegraph.co.uk/finance/comment/alistair-osborne/9626622/BPs-Bob-Dudley-risks-an-even-grizzlier-Russian-bear-hug.html

**Recommendation:** All UK Ministers travelling abroad should be provided with a specific briefing of human rights violations in countries identified by the FCO as problematic and given explicit instructions to raise concerns with their official interlocutors in those countries. The Government should institutionalise arrangements so that all Ministers are raising the issue from the perspective of their own department. For instance, the Trade Minister should address the impact on foreign investment, while DECC Ministers should address human rights with regard to the expropriation of Yukos when dealing with Russian energy companies and deals.

5. Sochi Winter Olympics 2014

5.1 I welcome the FCO's continued "support for the rights of disabled people in Russia, which will host the next Winter Olympic and Paralympic Games in 2014." I note with interest also the release of a joint communiqué by Russia, Brazil, Korea and the UK pledging to use the games "to promote and embed respect for human rights across the world." I would be concerned, however, that Russia will in fact attempt to use the 2014 games to deflect attention from its poor and deteriorating human rights record.

5.2 I note that two other political prisoners in Russia recognised by Amnesty International as prisoners of conscience, Nadezhda Tolokonnikova and Maria Alekhina, members of the punk-rock band "Pussy Riot" were denied parole in May 2013 in violation of legal procedure. Both are due to complete their 2-year penal colony sentences in early March 2014, immediately after the Sochi Olympics. I would be concerned that their long overdue release could be used as a distraction from the more recent verdicts in the cases of political prisoners arrested following Bolotnaya Square protests.

**Recommendation:** All UK Ministers and officials travelling to Sochi for the 2014 Winter Olympics should receive a specific briefing on Russian human rights violations.

*28 May 2013*

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## Written evidence from ABColombia

1. ABColombia is the advocacy project of a group of five leading UK and Irish organisations with programmes in Colombia: **CAFOD**, **Christian Aid UKI**, **Oxfam GB**, **SCIAF** and **Trócaire**. It was founded in 1997 to work on the question of forced internal displacement; it has since expanded its mandate to cover human rights and development. The work of ABColombia is rooted in the experiences of the organisations and communities with whom members work (around 100 partners organisations), which include afro-Colombian, peasant farmer and indigenous communities, and women's groups.

2. Summary

2.1 ABColombia welcomes the opportunity of making a submission to the UK Foreign Affairs Committee inquiry into the Foreign and Commonwealth Office's human rights work in 2012. This submission addresses three areas of the report: Colombia as a country of concern; the G8 declaration and the Prevention of Sexual Violence in Conflict Initiative (PSVI) and business and human rights in relation to our experience on the ground in Colombia.

2.2 ABColombia agrees with the FCO report's analysis of structural problems in Colombia but finds it lacks analysis on the activities of the paramilitary groups operating in Colombia, at times allegedly in collusion with the security forces. On the ground these groups continue to actively violation rights and are an obstacle to peace in Colombia.

2.3 An error in the statistical data in the hard copy of the report meant a lack of analysis regarding the deterioration in the situation for **human rights defenders** in Colombia. In fact in just two years, 2010 (32 killed) to 2012 (69 killed), the numbers killed has more than doubled.[128] Along with the criminalisation of human rights defenders this represents a major challenge.

2.4 According to the Colombian Constitutional Court the vast majority of conflict related sexual violence in Colombia is not reported. In our experience the crimes that are brought to the attention of the authorities are done so with the support of NGOs, without which none of these crimes would have reached the justice system. Prioritising funding for Non-Governmental Organisations (NGOs) in the access to justice element of the PSVI and G8 strategies is therefore essential. In recent years UK funding[129] to Colombia has increasingly insisted on NGOs working in partnership with the Colombian Government. Whilst dialogue with the State is essential for change to happen, working in partnership is not always desirable when bringing judicial cases against State security forces and/or officials.

2.5 The implementation of UN Security Council Resolutions on Women, Peace and Security should be a prerequisite to being elected onto the Security Council; otherwise a negative message is given to other countries about the importance of implementing Resolutions on women and sexual violence. Colombia has just left the

[128] Informe Anual de 2012, Somos Defensores, April 2013
[129] FCO Human Rights and Democracy Programme Funding.

UN Security Council without developing a National Action Plan on Resolution 1325, despite the best efforts of women's NGOs.

2.6 We welcome the efforts made by the UK Government to consult civil society on its strategy for the implementation of the **UN Guiding Principles on Business and Human Rights**, and its support to Colombia to develop its own policy. In respect to its work on this, the Embassy sought to operate a similar model of including government, business and civil society. However this has not applied in all areas. It should ensure that when it provides support and/or funding for events that could lead to policy on this issue they ensure that NGOs are adequately represented in the debates and discussions.

2.7 For the UK's policies to support both land restitution in Colombia and UK business to be consistent and promote the protection of human and environmental rights, it will be essential for the Embassy, UK Government and companies to ensure that they are not investing on tracts of land which may have been made available to investment through the forced displacement of civilians living on and using the land. Companies operating in Colombia need to be taking proactive measures to ensure that they do not benefit, knowingly or unknowingly, from human rights abuses.

2.8 Businesses can have an impact **on almost all human rights**. Therefore, it is essential to have a smart mix of legal and voluntary mechanisms. Whilst voluntary measures and principles such as Corporate Social Responsibility (CSR) have served to raise standards due to their role in pushing incremental improvements, a major negative impact has been that they have undermined attempts to develop effective legal sanction, both at national and international level, without which it is not possible to prevent companies abusing the rights of local communities. The UN Framework makes it clear that there is a responsibility upon States to set out clearly the expectation that companies domiciled in their territory or jurisdiction respect human rights throughout their operations.

## 3. Recommendations for the Committee to consider for inclusion in its report to the House

To recommend that:

3.1 The FCO incorporates into its next quarterly report on Colombia a more detailed analysis of the situation of human rights defenders. Given the deterioration of the situation with 69 defenders killed in 2012 which has more than doubled in two years (32 killed, 2010).

3.2 The UK/DTI and BIS liaise closely with those in the government working on Colombia and human rights when promoting trade, to ensure that the principle of not downgrading human rights to trade is upheld. It should avoid promoting trade that requires land use in Colombia until land restitution to Colombia's victims has been completed.

3.3 The PSVI should ensure that funding to women's organisations and NGOs working on conflict related sexual violence is not conditioned on working in partnership with national governments.

3.4 The UK Strategy on Business and human Rights has a smart mix of legal and voluntary mechanisms in order to comply with the States responsibility to protect human rights.

## 4. Countries of Concern—Colombia

4.1 ABColombia welcomes the inclusion of Colombia as a country of concern and agrees with the **structural problems** outlined in the FCO Human Rights and Democracy Report 2012, including the ongoing conflict, impunity, the need for land restitution, as well as the serious threats faced by human rights defenders and people who have raised concerns about business activities in rural areas.

4.2 There is also a lack of analysis regarding the **deterioration of the situation for human rights defenders and community leaders: with 69 being killed in 2012 this has more than doubled in two years (32 were killed in 2010).**[130] This represents a major challenge to democracy. Any sustainable peace has to have a firm democratic foundation built on respect for human rights and the work and protection of defenders are key to establishing this.

4.3 What we consider missing from the analysis is the continued existence and **activities of the paramilitaries** in Colombia (usually referred to by the Colombian Government as Criminal Gangs—BACRIM). Paramilitaries are one of the major obstacles to peace in Colombia as well as being one of the major violators of human rights.

4.4 Whilst we would like to see more done, we recognise that the British Embassy in Colombia plays an important role and often a leading role amongst European Embassies in promoting human rights. Of particular note is the Embassy's work monitoring and taking actions with respect to human rights defender **David Ravelo Crespo** (who has been imprisoned and condemned without respect to due process) and regarding **Curvaradó and Jiguamiandó communities** (where there have been killings and disappearances of community leaders working on land restitution). These and other actions have been crucial and will continue to be so in defence of human rights.

[130] Informe Anual de 2012, Somos Defensores, April 2013

4.5 in addition to the key challenges raised by the FCO report, we would add: ending paramilitarism which continues to operate with alleged links to the security forces; establishing a framework for peace that includes victims' rights to truth, justice and reparation; ensuring changes to the Military Justice System which do not conform to international standards are not implemented; that policies for protection of human rights defenders are implemented effectively; and ensuring the implementation of UN Resolutions 1325 and 1820, and policies designed to prevent and/or prosecute conflict related sexual violence.

4.6 The **humanitarian crisis** in Colombia is frequently overlooked. Colombia currently has the highest number of internally displaced peoples in the world (5.5 million), according to the Internal Displacement Monitoring Centre. In 2012 approximately 230,000 people were forced to flee their homes. Among internally displaced peoples, 94% live in poverty and 77% in extreme poverty.[131]

4.7 There are a series of major challenges to the **implementation of the Victims and Land Restitution Law**, including security and sustainability for those returning. Whilst there is an initial start up grant for victims to assist in their return, there is a lack of a concrete plan of sustainable support; and the National Development Plan (NDP) lacks a major strategy to facilitate small scale agriculture and rural livelihoods. Here the UK could be proactive in getting the EU to maintain a broad funding stream for small scale livelihoods and farming; this approach to supporting the victims would also contribute to a sustainable peace process.

## 5. G8 Declaration and the Preventing Sexual Violence Initiative (PSVI)

5.1 Both the G8 declaration and the PSVI are really welcome initiatives by the UK Government. Consultation with women's groups, INGOs and NGOs in the UK, as well as debates in parliament, meant that the priorities for the G8 Declaration on preventing sexual violence have a strong basis now for the work that needs to be undertaken. We particularly welcome the inclusion of risks faced by women human rights defenders working in this area.

5.2 Colombia, according to the Constitutional Court has a **systematic but hidden problem of conflict related sexual violence.** The UK's of a team of experts on sexual violence in conflict violence could be a useful resource in this context given that an important focus of the PSVI is tackling impunity and creating **access to justice**.

5.5 It is therefore important **to focus on how cases get to court,** particularly when security forces are involved in this practice. Difficulties in reporting these crimes is likely to be further compounded by the progress of new legislation reinforcing the **Military Justice System,** which consolidates the involvement of the security forces in deciding if a case will be investigated by the military or civil justice system. Our experience in Colombia is that the women, who have managed to report sexual violence crimes, have only done so when they have been in contact with women's organisations. Therefore, to enable cases to get into the justice system it will be essential for the UK to prioritise funding for **women's organisations** working at the grassroots level who are documenting cases, bringing them to court, and providing psychosocial and other support systems.

5.6 Over recent years our partners in Colombia have raised their concerns that the funding provided via the British Embassy has increasingly emphasised working in partnership with the Colombian government. Funding to women's organisations and NGOs working on conflict related sexual violence should not be conditioned on working in partnership with national governments. The emphasis on this has excluded many human rights organisations from applying to the UK Embassy (in Colombia) for funding.

## 6. Business and Human Rights

6.1 We welcome the efforts made by the UK Government to consult civil society on its strategy for the implementation of the **UN Guiding Principles on Business and Human Rights**, and its support to other countries to do the same. Given that the UK strategy will not be out until later in the year it is not possible to comment on how the recommendations by civil society have been incorporated into that strategy. However, we would like to comment on some of the key aspects we would expect to see in a business and human rights strategy.

6.2 The UK Government's **consultation** for this strategy included business, academics and CSOs, which was a useful model. The UK Embassy in Colombia appears to have adopted the same model of involving government, experts and civil society/NGOs in the consultation on designing a strategy. However, when it comes to incorporating civil society's voice in key discussions on policy and in arenas which influence the formation of policies the UK Embassy has not been proactive in insisting on Colombian civil society participation, even at events that they have funded. This is illustrated by a recent high level conference on the implementation of UN Guiding Principles on Business and Human Rights and the Voluntary Principles on Human Rights and Security to feed into Colombian Government policy; the UK Embassy funded this two day conference. There was participation from only one Colombian CSO and no participation on the panels by indigenous and minority groups. In addition, CSOs would have been excluded from participating due to the incredibly high cost of attending.

[131] Internal Displacement Monitoring Centre, "Global Overview 2012, April 2013

6.3 The **exclusion of indigenous and minority groups** from this conference is of particular concern given that the FCO Human Rights Report 2012 states that "*poor business practices can have a significant detrimental impact on these [indigenous] communities"*. This is particularly the case in respect to mining and infrastructure. Mining is a key area of UK investment in Colombia. The British government is also heavily involved in promoting business opportunities for UK companies in infrastructure. This can be seen in that a stated goal of the UK Trade Department is for UK companies to win at least five £75m infrastructure contracts in Colombia.[132] To comply fully with the UN Guiding Principles, the UK must do more to promote engagement with local NGOs to ensure more effective due diligence and the prevention of business related human rights violations. This includes consultation with NGOs around impact assessment procedures, working in conflict-affected areas, and in design and performance of grievance mechanisms.

6.4 For the UK's policies to support both land restitution in Colombia and UK business to be consistent and promote the protection of human and environmental rights, it will be essential for the Embassy, UK Government and companies to ensure that they are not investing on tracts of land which may have been made available to investment through the forced displacement of civilians living on and using the land. Companies operating in Colombia need to be taking proactive measures to ensure that they do not benefit, knowingly or unknowingly, from human rights abuses.

6.5 One of the key findings of John Ruggie, UN Secretary General's Special Representative for Human Rights and Transnational Corporations and Other Business Enterprises, was that businesses can have an impact on almost all human rights. Therefore, it is essential to have a **smart mix of legal and voluntary mechanisms.** Whilst voluntary measures and principles such as Corporate Social Responsibility (CSR) are essential for guiding companies, and have served to raise standards due to their role in pushing incremental improvements, a major negative impact has been that they have undermined attempts to develop effective legal sanction, both at national and international level, without which it is not possible to prevent companies abusing the rights of local communities. Ruggie highlighted that *"unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless."*[133]

6.6 We would recommend that the UK Government look to extend ***extra-territorial jurisdiction*** to cover actions overseas by businesses based in the UK, or by firms operating under contract to the UK Government, which have an impact on human rights. Last year the Foreign Affairs Committee recognised that *"Relying on local administration of justice may not be enough to preserve the international reputation of the UK for upholding high standards of human rights"* and there was a suggestion to link the provision of *"Government procurement opportunities, investment support and export credit guarantees to UK businesses' human rights records overseas".*[134] *The recent trend has been towards holding companies liable* for offences overseas. For example, the UK recently expanded its extra-territorial jurisdiction to include holding companies liable for bribery offences committed outside the UK (through the Bribery Act 2010).

6.7 The criteria available for extra-territorial jurisdiction include *"where it appears to be in the interest of the standing and reputation of the UK",*[135] a criterion engaged in relation to the arms trade. We believe the standing and reputation of the UK is affected by unprosecuted violations of human rights by all its companies overseas, not just companies involved in the arms trade.

6.8 There is a responsibility upon States to set out clearly the expectation that companies domiciled in their territory or jurisdiction respect human rights throughout their operations. Clarity of the State's expectations is essential for businesses in order that they can ensure their compliance. One area where clarity could be improved is on making reporting mechanisms robust. Particular provision within human rights reporting (under the Companies Act 2006) could be given to making it mandatory to report on engagement and consultation processes in Indigenous and Tribal Peoples' territory[136] due to the serious potential consequences of resource extraction on their culture and way of life. Corporations should be required to provide detailed reporting on how they have complied with this process.

*24 May 2013*

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[132] UK Government, "Increasing the quantity and range of UK-Colombia trade", 21 March 2013

[133] Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts, *Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises,* UN Document A/HRC/4/035 (19 February 2007)

[134] Foreign Affairs Committee, Third Report of Session 2012–13, 11 September 2012 session

[135] Ibid

[136] In the case of Colombia Afro-Colombians are included under the ILO Convention 169.

### Supplementary written evidence from ABColombia

ABColombia Response to exchanges at Q 166 to 170:

http://www.publications.parliament.uk/pa/cm201314/cmselect/cmfaff/uc529-ii/uc52901.htm

In February, 2013 when the UK Embassy in Colombia presented their information on the funding criteria for projects in Colombia, they did this alongside the Vice-President of Colombia, whom the Embassy had invited to speak. The UK Embassy outlined the criteria for grant applications, giving background information to help non-governmental organisations (NGOs) fill in a good application. In their presentation the Embassy emphasised something very similar to what Amy Clemitshaw under Q170 put succinctly:

> One of the things we are looking for is what is going to make the most effective project, delivering your project in partnership with the Colombian Government will give your application far more chance of being successful.
>
> The previous year the Embassy had stressed that ensuring that you were in dialogue with the Colombian Government would give the project greater chances of success.

The UK Embassy in Colombia has a very small pot of money to give to NGOs. The movement from "dialogue with" the Colombian Government to "working in partnership with" the Colombian Government was made very clearly in the overhead presentation.

The presentation stated "we want to work together with the Government and civil society to tackle these themes" (*Queremos trabajar en conjunto con el gobierno y el sociedad civil para abordar estos temas*) and under the criteria the only point underlined on the presentation was "demonstrable partnerships with the public sector" (*Alianzas demonstrable con el sector publico)*. The context in which this presentation was given should also be considered: it was made with the Vice-President of Colombia present at the Embassy's invitation, and he publically stated he agreed with the proposals.

In the **British Embassy Bogota- Human Rights and Democracy Fund 2013–14 notes to applicants** it states: "*Our aim is always to support joint work between the government and civil society groups"*.

Various NGOs at the presentation made the point that in certain situations and certain parts of the country it would be difficult to work in partnership with government; specifically local and regional governments. Colombia still suffers from corruption and involvement with illegal armed groups (paramilitary, guerrilla and criminal) in local areas and regional governmental structures. For projects working on issues of human rights and democracy, a sensitive subject in these areas, it is extremely difficult, if not impossible, to apply for funding from the UK Embassy.

The result of all this is to dissuade NGOs from applying unless they are working in partnership with the Colombian Government. We pointed out the dangers of this for specific projects in our original submission to the Foreign Affairs Committee.

*3 September 2013*

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### Written evidence from Rights and Accountability in Development (RAID)

1. Rights & Accountability in Development (RAID) welcomes this opportunity for presenting written evidence to the Committee concerning the Foreign and Commonwealth Office's human rights work in 2012, taking as a starting point the Department's 2012 report on Human Rights and Democracy.

2. RAID is a research and advocacy organisation that promotes respect for human rights and responsible conduct by companies abroad. We are a longstanding contributor to the debate on corporate conduct during and after the devastating war in the Democratic Republic of Congo (DRC). RAID has participated in the work of the United Nations on business and human rights and that of the UK National Contact Point for the OECD Guidelines for Multinational Enterprises. It has examined the implementation of the OECD's Guidance for the Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas in Katanga. It was involved in drafting the International Code of Conduct for Private Security Providers. Its most recent publications Questions of compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce Limited (2011); and Asset laundering and AIM: Congo, corporate misconduct, and the market value of human rights (2012), are available on its website: www.raid-uk.org.

#### 3. Summary and Main Findings

RAID's submission covers the following aspects of the Foreign and Commonwealth Office's work: foreign mining assets and the regulation of the London Stock Exchange; the functioning of the sanctions regime; and the regulation of private security providers.

(i) Poor governance issues and misconduct concerning London-listed mining companies have damaged London's reputation. Reforms introduced under the Financial Services Act (2012) do not go far enough. The rules related to London's junior Alternative Investment Market (AIM) should be

strengthened to prevent assets of dubious provenance from conflict-affected countries from being laundered.

(ii) There are increasing problems with the lack of transparency and consistency in the way that sanctions are applied or withdrawn which is reducing the effectiveness and credibility of the sanctions regime.

(iii) In its proposals for self-regulation of the private security providers the UK government is failing in its duty to protect individuals against human rights abuses by third parties, including business. States, as host countries, homes countries and clients of private security providers, retain the primary responsibility for regulating the industry.

### Regulation of the London Stock Exchange

> *"Trade is most sustainable in markets characterised by good governance, the rule of law, transparency and responsible business conduct, including the protection of, and respect for, human rights… It reduces the risks and associated costs of reputational damage, disruption and litigation…"*[137]

4. In May 2011, RAID submitted a complaint to the London Stock Exchange concerning the Central African Mining & Exploration Company (CAMEC).[138] The complaint related to CAMEC's conduct in the Democratic Republic of Congo (DRC) and compliance by the company and its adviser with AIM rules. These failures allowed assets of dubious provenance to be traded on the junior market without due regulation. In 2009, CAMEC's Congolese assets were acquired by Main-market-listed the Eurasian Natural Resources Corporation (ENRC).

5. There have been a number of related regulatory developments since RAID submitted its complaint to the Exchange. AIM Regulation used its October 2012 *Inside AIM* communication to AIM company nominated advisers (nomads) to set out further guidance on the requirements of due diligence on directors and on best practice in contacts between AIM companies and their nomads. RAID's report highlighted lapses in due diligence in the CAMEC case and it should be noted that AIM Regulation, in deciding to provide further guidance, refers specifically to its disciplinary notice on the nominated adviser ("nomad") Seymour Pierce, which was also CAMEC's adviser.[139] RAID was critical of the ambiguity concerning the requirement for due diligence on substantial shareholders or key figures exerting influence or control over a company: AIM Regulation now advises that "the principles regarding due diligence on directors…can be equally applied as guidance." RAID's report provided many instances where price-sensitive information appears to have been withheld. AIM Regulation now emphasises the need for nomads to follow-up on questions in a meaningful way and "to consider the spirit and underlying purpose" of rules governing the notification price-sensitive information without delay. **RAID would like to see the new guidance formalised under the Rules for Nominated Advisers**.

6. Proposals under the Financial Services Bill (2012) that paralleled RAID's recommendations—to require human rights reporting by applicants to the stock exchange or annual human rights impact statements by oil, gas and mining companies—were tabled, but rejected by the government and were absent from the final Act. The government argues that the Financial Service Authority (now the Financial Conduct Authority) already has the powers to draw up such requirements, should it see fit, under the listing rules and so they should not be written into primary legislation. The government also rejected a role for the Financial Conduct Authority in fostering ethical corporate behaviour, including respect for human rights. **The Act does, however, retain additional measures referred to by RAID to increase scrutiny of the regulators themselves, although we advocate the need for thorough reform of the way in which complaints are handled.**

7. Poor governance issues and misconduct concerning London-listed mining companies—such as Eurasian Natural Resources Corporation (ENRC) and Bumi plc—have damaged London's reputation and resulted in recent proposals for more effective listing rules. RAID's report drew attention to unanswered questions surrounding ENRC's acquisition of CAMEC and our work on the regulation of AIM has been fed into our response to the FSA consultation.[140] **Whilst supportive of the tightening of listing rules curtailing and disclosing the influence of controlling shareholders, RAID remains critical of a regime that allows assets to be effectively laundered on the junior AIM market.**

8. It is our experience that failures of due diligence, misapplication of the class tests, and breaches of disclosure rules under the AIM regime have allowed assets derived from conflict and weak governance zones

[137] Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report p. 93

[138] RAID, *Questions of Compliance: The Conduct of the Central African Mining & Exploration Company (CAMEC) plc and its Nominated Adviser, Seymour Pierce*, Submission to AIM Regulation, May 2011, available at: < http://raid-uk.org/docs/AIM/AIM_Submission_2011.pdf>.

[139] In May 2013, Seymour Pierce went into administration after the FSA had blocked an investment by a Ukrainian businessman. It has since been bought by Cantor Fitzgerald. See Vanessa Kortekaas and Kate Burgess, "Cantor in talks over Seymour Pierce," *Financial Times*, 6 February 2013, <http://www.ft.com/cms/s/0/25209ea2–7093–11e2-a2cf-00144feab49a.html#axzz2Ty6FMYE8>; also Harry Wilson, "Cantor Fitzgerald buys Seymour Pierce out of administration," *The Telegraph*, 23 May 2013, <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9858794/Cantor-Fitzgerald-buys-Seymour-Pierce-out-of-administration.html>.

[140] RAID, *Polishing the family silver: Response to the FSA's Consultation Paper CP12/25 Enhancing the effectiveness of the Listing Regime,* November 2012, available at: http://raid-uk.org/docs/Response_FSA_Consultation_2012.pdf>.

to be traded and attract capital investment on the junior market before being transferred (by acquisition) to the main market. **Unless the "downstream" failings are also addressed, the message sent is that high standards in corporate conduct are only required and brought to bear after tainted assets have already been laundered under a junior market regime which is *laissez-faire* by design.**

*Recommendations*

9. There is a pressing need to learn the lessons of the CAMEC case, both in bringing errant or recalcitrant companies and their advisers to account and in reforming the way in which the junior market is regulated:

(i) A public determination of compliance or non-compliance in the CAMEC case.

(ii) The strengthening under AIM rules of on-going due diligence for all substantial transactions involving assets in conflict-affected or weak governance zones: checks on the validity of titles and licences, the reputation of key managers, business partners and associates and the rigour of accounting practices.

(iii) Prevention of the same firm from acting as both nomad and broker at admission, so that the gatekeeper function is ring-fenced from the drive to earn commission from a successful flotation.

(iv) The making of all breaches by nomads public and naming the adviser concerned.

(v) Seeking to ensure that the European Union's revised Transparency and Accounting Directives requiring the publication of payments made by extractive companies to governments is extended in the UK to include AIM, which could otherwise be exempt.

## Application of the sanctions regime

> *"When the international community seeks to respond to the abuse of human rights by a government, group or individual, sanctions can be an effective tool in constraining unacceptable activities or forcing a change in behaviour."*[141]

10. In the 2008 election, ZANU-PF's Robert Mugabe retained the presidency of Zimbabwe after a campaign of horrific brutality against opposition supporters. Up to 200 people were killed, 5,000 more were beaten and tortured, and 36,000 people were displaced over the course of the election. The violence was financed by money channelled to the Mugabe government via a loan as part of a lucrative platinum deal by CAMEC.

11. Commentators at the time described the advance as a "thinly disguised donation... nothing less than an unsecured cash loan to the Zimbabwe Government... "the president Robert Mugabe regime".[142] An opposition spokesman has stated:[143] "all the heartache, pain, gerrymandering, violence, intimidation, repression that took place at the 2008 election is directly linked to that 100 million."

12. In July 2011 RAID sent a memorandum to the Asset Freezing Unit (AFU) seeking clarification on: compliance of the 2008 platinum deal with sacntions and; the application of sanctions to trading in CAMEC shares of possible direct or indirect benefit to designated persons or entities, including Muller Conrad (a.k.a. Billy) Rautenbach, who was added to the EU list in January 2009.

13. RAID sought to clarify that designated individuals—including Billy Rautenbach (former owner of the principal assets acquired by CAMEC, who continued as manager of the mines for a significant period under CAMEC's ownership, and who was a major CAMEC shareholder)—did not profit from the sale of CAMEC to ENRC. Rautenbach held a significant shareholding in CAMEC via a number of entities that it is known or suspected that he controlled (Harvest View Limited, Meryweather Investments Limited, Temple Nominees Limited and Chambers Nominees Limited). When ENRC made its offer to acquire CAMEC, this entailed buying Rautenbach-controlled shares from which he would ultimately benefit. In order to buy such shares, ENRC was required to obtain a licence from HM Treasury.

14. The Treasury has refused to "comment on specific cases involving named individuals and entities and… does not comment on individual licence applications". It claims that claims that Article 8 of EU Regulation 314/2004 prohibits information obtained to facilitate compliance with the Regulation to be used for any purpose other than that for which it was provided.

15. Notwithstanding the validity or otherwise of withholding information on named entities, RAID contends that certain information being sought relates to the AFU's administration—for example, the dates upon which licenses were issued. Likewise, notwithstanding the validity or otherwise of relying upon Article 8 of Council Regulation 314/2008 to withhold information, RAID contends that information on the timing of licences or the dates of notification to other competent authorities or the Commission manifestly falls outside the scope of any such exemption. Moreover, key questions of compliance with sanctions law, in relation to both the 2008 platinum deal and ENRC's purchase of CAMEC, have not been publicly addressed.

[141] Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report; p. 115

[142] Barry Sergeant, "Zimbabwe's robber barons," *Moneyweb*, 28 June 2008.

[143] MDC-T Treasurer General Roy Bennett, in a SW Radio Africa interview, presented by Alex Bell, broadcast 14 August 2012. See *Transcript of Diaspora Diaries with Roy Bennett*, posted 17 August 2012, available at: <http://www.swradioafrica.com/2012/08/17/transcript-of-diaspora-diaries-with-roy-bennett/>.

16. Recent developments may yet force the authorities to reconsider the evidence. Eurasian Natural Resources Corporation (ENRC), the FTSE 100 company that acquired CAMEC and its assets in 2009, is now the subject of a criminal investigation by the Serious Fraud Office (SFO).[144] Moreover, press reports, based on a letter from a legal firm formerly engaged by ENRC's to conduct an internal investigation into misconduct, indicate that the acquisition of CAMEC "involved possible breaches of financial sanctions".[145]

*Recommendations*

(i) Possible breaches of financial sanctions must be fully investigated and, where there is evidence of illegality, the perpetrators must be prosecuted.

(ii) The AFU should make public all licence applications to deal or trade in the holdings of sanctioned individuals or entities and the grounds upon which any such licences were granted or refused; likewise, applications under EU provisions to release funds to sanctioned individuals or entities for "extraordinary expenses" should be published in full or redacted form, having balanced personal confidentiality against the public interest.

(iii) The process by which individuals or entities are designated as sanctions targets is entirely opaque. Not only should the rules or process by which decisions to add or remove people or entities be made public, but a channel should be established under which third parties, including NGOs, can submit information to be taken into consideration.

## Private Security Providers

> *"The UK has played a leading role in supporting the development of effective regulation of PSC activity in complex environments to help ensure that their work is carried out in a manner consistent with international legal and human rights obligations."*[146]

17. RAID participated in the development of the International Code of Conduct for Private Security Service Providers (ICoC) and the establishment of the Association which includes provisions for oversight of the industry. RAID has participated in the process because it believes that, if accompanied by an effective governance and oversight mechanism, ICoC could be a step towards increasing transparency about the activities of the private security industry and holding private security providers accountable for human rights violations.

18. It is a matter of concern therefore that the Foreign and Commonwealth Office (FCO) and industry seem intent on self-regulation. The FCO seems to be paying lip-service to the ICoC multi-stakeholder initiative yet over the past year it has pressed ahead with plans for an industry-based certification procedure. In May 2013 the Minister for Africa, Mark Simmonds, announced that the UK Accreditation Service will shortly launch a pilot scheme to approve the certification bodies that will be able to independently audit and monitor private security companies to a separate UK national standard, supposedly "derived" from the ICoC.[147] All of these steps have been taken behind closed doors with little or no public scrutiny and, to date, no civil society participation.

19. In 2011 the Security in Complex Environments Group (SCEG) was appointed as the UK Government's Industry Partner for the regulation of Private Security Companies. SCEG is a special interest group within ADS (the trade organisation for all companies operating in the UK Aerospace, Defence, Security and Space industries). RAID has expressed concern about the lack of transparency surrounding FCO's work with SCEG in the development of the UK national standard and an accompanying certification scheme. RAID has warned the Government that self-regulation by an industry body will lack credibility.

20. Civil society groups have also expressed concern that the process envisioned under the ICoC is over-reliant on corporate-level grievance mechanisms and that the role of the Association is limited to providing advice on the effectiveness of those mechanisms. But SCEG members have made clear their opposition to even this level of independent scrutiny.

21. States, as host countries, homes countries and clients of private security providers, retain the primary responsibility for regulating the industry. While the ICoC could be a positive development, it is not sufficient to make private security companies truly accountable for their actions. The Code, which envisions termination of membership as the ultimate sanction for non-compliance, is not equipped to deal with serious human rights violations, such as murder and torture. Only statutory national and international regulation can bring legal accountability and judicial remedies to victims for such actions. Indeed, as signatories of the Montreux Document[148](which reaffirms the obligation on States to ensure that private military and security companies operating in armed conflicts comply with international and humanitarian and human rights law) , all member states in the ICoC Association would be required to establish criminal jurisdiction over private security providers and their personnel, to provide for non-criminal accountability, to include civil liability of private

[144] <http://www.sfo.gov.uk/our-work/our-cases/case-progress/enrc-plc.aspx>.

[145] Danny Fortson, "Heart of Darkness," *The Sunday Times*, 28 April 2013.

[146] Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report pp 88–89

[147] FCO Minister's speech to Security in Complex Environments Group 8 May 2013 https://www.gov.uk/government/speeches/fco-ministers-speech-to-security-in-complex-environments-group

[148] Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies during Armed Conflict. http://www.icrc.org/eng/resources/documents/misc/montreux-document-170908.htm

security companies, and to create sufficient administrative and other monitoring mechanisms to ensure accountability for any improper conduct.

*Recommendations*

(i) The UK Government should establish criminal jurisdiction over private security providers and their personnel, provide for non-criminal accountability, to include civil liability of private security companies, and create sufficient administrative and other monitoring mechanisms to ensure accountability for any improper conduct.

(ii) The ICoC can only be credible if the Secretariat is able to maintain an independent capacity to authorise field audits in order to assess the impact of private security providers and to follow up on allegations of non-compliance with the Code, even if certification to a national standard has already been granted. Because governments, as clients of the industry, may experience a conflict of interest in acting both as regulators and users of the industry's services, an independent oversight mechanism is crucial to ensure that the process is credible.

(iii) If the ICoC is to be more than a toothless process, the Board should also be able to issue sanctions for non-compliance with the Code, including but not limited to suspension or termination of membership.

*24 May 2013*

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## Written evidence from Save the Children

### 1. Introduction

1.1 Save the Children is the world's independent children's rights organisation. Save the Children works in more than 120 countries. We save children's lives. We fight for their rights. We help them fulfil their potential.

1.2 We have focused our submission to this inquiry on the 11 April declaration by G8 Foreign Ministers on the prevention of sexual violence in conflict, and the impact of the FCO's Preventing Sexual Violence Initiative, launched in May 2012.

1.3 Save the Children has child protection programmes in 33 countries covering issues such as sexual abuse and violence, hazardous child labour, trafficking, recruitment of children into armed forces, and harmful traditional practices such as FGM and early marriage. We have programmes tackling sexual violence in a number of countries including the DRC, Sierra Leone, Liberia, Tanzania, Kenya and Colombia. Our Signature Programme in the DRC includes evidence-based interventions to empower communities to prevent and respond to sexual violence against children, improve the response for and care of child survivors, and strengthen legislation and policy implementation.

1.4 Save the Children also wishes to draw attention to the joint submission by the BOND Child Rights Working Group (of which Save the Children is a member) where we draw attention to broader consideration of children's rights within the FCO's work.

### 2. Summary

2.1 Save the Children welcomes the 11 April Declaration on the Prevention of Sexual Violence in Conflict and the inclusion of children and children's rights within it. There are a number of elements that should be welcomed from a children's rights perspective, which we elaborate on in our submission below.

2.2 There are also some areas where the Declaration could be strengthened further and these could be addressed in future work. For example, it would be useful to recognise that sexual violence in conflict can be perpetrated by acquaintances or family members as well as armed actors, and that this kind of violence can flourish when society breaks down. It would also have been useful if the Declaration specifically called more funding and support for child protection as a core component of every humanitarian response.

2.3 While it is too early to assess the overall impact of the Preventing Sexual Violence Initiative (PSVI), there are early signs that it has had a positive impact, including increasing the likelihood that leaders in conflict-affected countries will speak out about the problems of sexual violence within their countries. But it should also be recognised that the PSVI is only a starting point and that its focus on impunity and prosecution should be only one part of a much larger package of solutions.

2.4 As the PSVI work goes forward, Save the Children feels that continued and further emphasis can be placed on support and funding for work that prevents sexual violence in conflict, including looking at addressing the root causes of sexual violence that may be in place long before a conflict starts.

2.5 We will also be watching further developments, including DFID's upcoming work on violence against women and girls in humanitarian situations, to see that funds are being earmarked for child protection at the outset of humanitarian intervention, to ensure that prevention and response to sexual violence is part of every humanitarian response. The UK government falls towards the bottom of the list of major donors for the priority it places on funding protection work when it allocates its humanitarian aid. The UK spent 0% of its

humanitarian aid on sexual and gender-based violence and just 0.22% on child protection between 2007 and 2012, placing it 11th out of 12 major humanitarian donors for the priority it places on protection in humanitarian response.

2.6 As discussed further in the joint submission from the BOND Child Rights Working Group (of which Save the Children is a member), we would encourage the FCO to expand the focus on children's rights, which in many ways was strong within the PSVI, across the rest of its work (including updating and implementing a children's rights strategy across the FCO).

## 3. The 11 April Declaration by G8 Foreign Ministers on the Prevention of Sexual Violence in Conflict and the impact of the FCO's Preventing Sexual Violence Initiative

3.1 Save the Children welcomes the 11 April Declaration on the Prevention of Sexual Violence in Conflict and the inclusion of children and children's rights within it. We also appreciated the efforts made to consult with NGOs in the months leading up to the launch of the Declaration and the openness of the FCO to incorporate the views shared during these consultations in the final Declaration.

3.2 From a children's rights perspective, a number of elements in the Declaration should be welcomed including:

- Recognition of the UN Security Council resolutions on Children and Armed Conflict, as well as those on Women, Peace and Security
- Recognition of the mandate of the UNSRSG on Children and Armed Conflict, alongside the UNSRSG on Sexual Violence in Conflict and of the interdependence between these two
- Recognition of the importance of protecting and promoting children's full human rights and of the relevance of children's rights to the prevention of sexual violence in conflict
- Explicit reference to the needs of boys as victims of sexual violence, as well as women and girls
- Recognition of the need for comprehensive support services for victims, whether they be women, girls, men or boys
- Strong recognition of the needs of child victims of sexual violence, and recognition that children are often excluded from adult-centric programming
- Recognition of the Minimum Standards for Child Protection in Humanitarian Action
- Recognition of need for further funding for prevention and response efforts and call on the international community to mobilise this funding from the first phase of conflict and humanitarian emergencies
- Recognition of the importance of taking the needs and rights of children into account in all peace negotiations, peacebuilding, prevention, and accountability efforts and of the need for security sector and justice reform programmes to be child-sensitive
- Calls for the deployment of child protection (and women's protection) advisers within appropriate UN and other peacekeeping operations and missions, as well as ensuring that these are appropriately trained and included on the central budget of these missions.
- Recognition of need to provide further support to the UNSRSG on Children and Armed Conflict

3.3 There are some areas where the Declaration could be strengthened further and these could be addressed in future work:

- The Declaration could situate the problem of sexual violence in conflict in its broader context. For example, it would be useful to recognise that sexual violence in conflict can be perpetrated by acquaintances or family members as well as armed actors, and that this kind of violence can flourish when society breaks down. It would also be useful if the Declaration recognised that sexual violence is just one type of violence that occurs during conflict, that all kinds of violence are present in pre-, during- and post- conflict phases, and that this is always tied up in power relations meaning that in most societies women and girls are predominately affected.
- It would have also been useful if the Declaration specifically called more funding and support for child protection as a core component of every humanitarian response. As we outlined in our *Unspeakable Crimes* report,[149] protection programmes (including child protection and sexual and gender-based violence programmes) are amongst the least funded sectors in most humanitarian responses. In 2011, for example, less than a quarter of the funding needed for protection programmes in humanitarian emergencies was made available.

3.4 With regards to the impact of the FCO's Preventing Sexual Violence Initiative (PSVI), while it is too early to assess the impact of this initiative there are early signs that it has had a positive impact.

[149] *Unspeakable Crimes Against Children: Sexual Violence in Conflict,* Save the Children (2013), pages 29–33.

— The Foreign Secretary's personal commitment to the issue has greatly helped to raise awareness and his commitment to making this a topic of conversation in all of his foreign affairs engagements and discussions with foreign leaders means that it becomes harder to ignore. The SRSG on Sexual Violence in Conflict, Zainab Bangura, speaks compellingly about shifts she has seen in conflict-affected countries where government leaders are now more likely to talk about the issue of sexual violence and to look for international support in addressing the problem. We have also heard the PSVI described as part of the catalyst behind DFID's proposed "international call to action on violence against women and girls in humanitarian emergencies".

— But it should also be recognised that the PSVI is only a starting point and that its focus on impunity and prosecution should be only one part of a much larger package of solutions. The PSVI will be considered to have a long-term and positive impact if it helps to catalyse sustained funding and support for grassroots work on the prevention of and response to violence, including work specifically addressing and the needs and rights of children. For Save the Children, this will need to include greater support and funding for child protection to prevent and respond to violence against children.

3.5 With regards to the funding announcements linked to the Prevention of Sexual Violence in Conflict made at the G8, Save the Children's reactions were as follows:

— Save the Children warmly welcomed the funding pledges made at the G8, especially when many of the G8 countries are in difficult economic circumstances. Marshalling these funds is a tangible positive impact of the FCO's Preventing Sexual Violence Initiative.

— We hope to hear in more detail how NGOs can apply to access the funds that were announced by the UK government, both those announced by the FCO and DFID, and will be keen to ensure that sufficient funds reach projects and programmes for children given that they often make up the majority of survivors of sexual violence in conflict.[150]

4. Recommendations for the FCO's Preventing Sexual Violence Initiative in future

4.1 We are delighted that there are indications that the work on Preventing Sexual Violence in Conflict will continue past 2013, and we look forward to further communication about what form this will take. We hope that the spirit of on-going collaboration with NGOs and other stakeholders will continue as well. As the PSVI work goes forward, Save the Children feels that continued and further emphasis can be placed on:

— Support and funding for work that *prevents* sexual violence in conflict, including looking at addressing the root causes of sexual violence that may be in place long before a conflict starts. Close collaboration between the FCO and DFID on these issues will be of great use.

4.2 We will also be watching further developments, including DFID's upcoming work on violence against women and girls in humanitarian situations, to see that funds are being earmarked for child protection at the outset of humanitarian intervention, to ensure that prevention and response to sexual violence is part of every humanitarian response. As we outlined in our Unspeakable Crimes report,[151] protection from violence is often at the bottom of the priority list when humanitarian funds are allocated. Funding needs for this work are almost always less well met than the average across other sectors. The UK government falls towards the bottom of the list of major donors for the priority it places on funding protection work when it allocates its humanitarian aid. The UK spent 0% of its humanitarian aid on sexual and gender-based violence and just 0.22% on child protection between 2007 and 2012, placing it 11th out of 12 major humanitarian donors for the priority it places on protection in humanitarian response.

4.3 As discussed further in the joint submission from the BOND Child Rights Working Group (of which Save the Children is a member), we would encourage the FCO to expand the focus on children's rights, which in many ways was strong within the PSVI, across the rest of its work (including updating and implementing a children's rights strategy across the FCO).

*24 May 2013*

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## Written evidence from Stonewall

1. Stonewall is a UK based organisation that has campaigned for equality for lesbian, gay and bisexual (LGB) people across Britain since 1989. Stonewall has worked for a number of years on LGB people's immigration and asylum issues. In 2010 we published the ground breaking research "No Going Back" into the experiences of LGB asylum seekers and have subsequently worked with the UK Border Agency and the Ministry of Justice to implement the report's recommendations.

2. Stonewall made a strategic decision to build on its UK based asylum work and begin to work to promote the human rights of LGB people internationally. We amended our charitable objectives to allow us to do so in October 2011.

[150] This is explored in more detail in Save the Children's recent report, *Unspeakable Crimes Against Children: Sexual Violence in Conflict.*

[151] *Ibid.,* pages 29–33.

## Summary

3. This paper sets out Stonewall's response to the Foreign Affairs Committee's inquiry into the Foreign and Commonwealth Office's (FCO) work on human rights and democracy in 2012.

- Overall Stonewall welcomes the focus on the human rights of LGB people in the *Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report* and the work carried out by many missions. In particular we welcome that the FCO has located human rights for gay people within the international human rights frameworks.
- Stonewall commends the FCO for working for gay equality in many areas where homosexuality is criminalised and where there are the most serious human rights abuses against gay people. We note that much more work on gay equality is done by the FCO than the *Human Rights and Democracy* report is able to cover, including in Commonwealth countries which are not included in the report but have a poor track record on gay equality.
- Stonewall calls for a systematic, transparent and accountable process to be used by all missions when deciding if and how to work on gay equality, along with training for diplomats to improve their understanding of LGB human rights and how to address them. Stonewall believes that the decision to update the FCO's *LGBT Toolkit* is a positive step towards increasing capacity on LGB issues.
- Stonewall believes the FCO should also work to ensure LGB British tourists are well supported and should work with UK business based abroad to assist them to achieve equality for LGB staff in their workplace. Both the needs of British tourists and business overseas should be further explored as potential diplomatic levers to advance gay equality worldwide.
- Stonewall encourages the UK Government to continue to play an instrumental role in the relevant multilateral agencies and to strengthen work in partnership with other bilateral actors, non-governmental organisations (NGOs) and civil society. In particular we welcome the active role of the FCO at the United Nations Human Rights Council, the European Union and the Council of Europe.
- Stonewall expresses its willingness for a closer working relationship with the FCO in its work for LGB equality globally.


## The content and format of the FCO's report, Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report

*Equality and Non Discrimination Section*

4. Stonewall welcomes the continued inclusion of the LGBT (lesbian, gay, bisexual and transgender) section in the report as it underlines that LGB human rights are not special rights but universal human rights. We also welcome the clear statement that to render same-sex relations illegal is incompatible with international human rights law, including the International Covenant on Civil and Political Rights (ICCPR). Situating the issues in the context of universally agreed human rights helps challenge the false argument made by some states that homosexuality is a western invention. Stonewall believes this approach is essential to advancing human rights for gay people globally.

5. Critical to furthering LGB human rights is the work of UK missions overseas. The report highlights useful and often creative bilateral initiatives taken by different embassies. There are clear examples of good practice where initiatives were taken with the full consultation and involvement of local LGB groups and wider civil society.

6. Stonewall has some cause for concern, however, over how individual missions decide to work on gay equality issues. The report explains that the decision to work on LGB human rights is delegated to individual Ambassadors. While Stonewall respects the role of the Ambassador we are anxious that only Ambassadors who have a personal commitment to advancing LGB equality will work on this issue. Stonewall would strongly support a more robust system of deciding whether and how to work on gay equality.

## Case Studies

7. Stonewall believes that the continued inclusion of case studies in the report is useful as it allows for countries that may not be on the list of countries of concern to be profiled for LGB human rights issues. It is also a useful way to showcase examples of effective diplomatic practice. It would be good to make more use of this section to profile the LGB rights work of the UK government in more depth.

*Countries of Concern Reports*

8. Stonewall welcomes that many reports on specific countries of concern feature examples of violations of the human rights of LGB people alongside other human rights issues. It is helpful that many of the profiles give clear examples of how the UK Government has pursued LGB human rights.

9. There is, however a notable absence of information of the human rights of LGB people in some of the countries listed by the FCO as countries of concern. This includes Eritrea, the Democratic Republic of Congo

and Sri Lanka where there are known violations of the human rights of gay people. Stonewall is concerned that the human rights of gay people are not being addressed by the FCO in these countries.

10. Stonewall recognises that the human rights violations are many and varied in these contexts, placing a considerable pressure on diplomatic relations as British Ambassadors continually need to challenge governments on many difficult issues. However, Stonewall maintains that the human rights of LGB people must take their rightful place in the work of missions alongside the rights of women and other minorities.

### British Nationals Overseas

11. Stonewall believes that lesbian, gay and bisexual UK nationals who are either working overseas or visiting as tourists should be afforded full human dignity but often face real threats to their safety and well-being. We are concerned therefore that there is no mention of the human rights of LGB people in the section on British Nationals Overseas.

12. Furthermore Stonewall believes that in countries where British tourists make a significant contribution to the local economy there may be a diplomatic opportunity to call for protections for LGB tourists and nationals alike.

### Other Comments on the FCOs Gay Equality Work

*Gay Equality and the Council of Europe*

13. Stonewall welcomes the continued focus on LGB equality the UK has brought to the Council of Europe and in particular the £100,000 donation to support the LGBT Unit. Stonewall has been working with the LGBT Unit to share good practice with the six states that are signed up as project participants.

14. To ensure momentum is sustained on LGB issues at the Council of Europe, Stonewall suggests that the UK Government now presses for the Unit to have a regular institutional budget and not to be subject to project funding.

### Gay Equality and the Commonwealth

15. Stonewall welcomes the UK Government's role in encouraging the Commonwealth Heads of Government Meeting (CHOGM) to focus on gay equality. In particular we are pleased that the UK played a leading role in the reform process and the development of the new Commonwealth Charter.

16. It is now important for the FCO to continue to press for these reforms to be fully implemented. In particular, Commonwealth countries must be supported "to take steps to encourage the repeal of discriminatory laws that impede an effective response to the HIV/AIDS epidemic" as agreed by Commonwealth Heads of Government. This must include the repeal of laws banning same-sex relations.

### Gay Equality and the UN

17. Stonewall welcomes the UK's commitment to support efforts in the various UN agencies to further global LGB equality. In particular we welcome the active role the UK has played raising the issues during the Universal Periodic Review Process and in supporting moves for a possible second UN Human Rights Council Resolution.

18. Stonewall hopes that the UK will continue to press for the agencies of the UN to work towards gay equality. In particular we hope the UK will:

- Press for the inclusion of specific issues facing lesbians and bisexual women at the Commission on the Status of Women.
- Press for the World Health Organisation to prioritise the concerns of LGB people.
- Support the United Nations Educational Scientific and Cultural Organisation to prioritise LGB equality in education.

### Business and Human Rights

19. Stonewall welcomes the inclusion of LGB equality in the UK Trade and Industry's investment for British Businesses operating overseas. We welcome the website's link to our *Guide on Global Working* which seeks to support business to support their gay staff overseas.

20. There exists a diplomatic opportunity for the UK Government to promote LGB equality to foreign Governments as an important requisite for UK business operating in their countries. UK business operating overseas should be supported to aim for the high levels of equality they are able to aspire to in the UK.

21. Stonewall has received requests from many of the UK based multinationals we work with on how they can support and protect LGB staff based overseas. As an employer of many lesbian, gay and bisexual staff worldwide, the FCO also plays a valuable role in sharing knowledge and good practice with other multilateral organisations on how to support and protect LGB staff worldwide.

22. Stonewall is keen to work with the British Government to support UK head-quartered multinational companies to champion diversity.

## Recommendations

### A systematic, transparent and accountable process of where and how to work on LGB equality needs to be developed

23. One of Stonewall's main concerns is that there does not seem to be a systematic, transparent and fully accountable process in place to support Ambassadors and High Commissioners when deciding whether and how to work on gay equality. Stonewall believes such a process is required so that missions are supported to fully analyse the situation for local LGB people in their country and assess what potential there is for diplomatic action. It will also allow the Ambassadors' decisions to withstand external scrutiny and enable others who are working for gay equality to effectively align their work with the UK Government.

24. Stonewall believes the process needs to be joined up with the Department of International Development. Legal, social, policy and economic opportunities should be identified and used. These different elements will ensure that the UK government's approach is multifaceted and sensitive.

### Better resourcing for the LGB work of the FCO

25. Stonewall welcomes the updating of the *LGBT Toolkit* and recommends that it be regularly updated to ensure the most effective diplomatic tools and approaches to further gay equality are used.

26. Stonewall believes that diplomats should be trained on LGB equality work. It should not be assumed that diplomats have an understanding of the issues, or feel comfortable talking about them to hostile audiences. To complement training there should be systematic sharing of lessons learned and good practice within the FCO, across Whitehall and with allied countries. This will help the UK government to remain at the forefront of global work on LGB equality.

27. Stonewall believes that local LGB groups and international NGOs are critical actors in the FCO's work for gay equality. Funding mechanisms such as the Ambassador's small or discretionary funds and the Human Rights and Democracy Fund should prioritise support for such civil society actors.

### To work more with bilateral allies and multilateral organisations

28. It is clear that the UK Government's current call for global LGB equality is echoed by many other bilateral and multilateral organisations. Stonewall believes that bilateral actors must continue to work closely together in order to maximise efforts and complement multilateral processes.

29. The FCO should make sure that discussions take place with bilateral allies on a post by post basis on how to further LGB equality locally. In addition Stonewall would encourage the FCO to continues to cultivate new global LGB equality allies, especially outside of Western Europe and North America, and to maintain consistent pressure on the Commonwealth and Council of Europe member states.

### Work with local and international NGOs

30. The role of national NGO movements is critical to work on gay equality. National NGOs or community based groups are often marginalised by their Governments and isolated from movements in other countries. A core element of the FCO's strategy should be to empower national movements and work with them in country wherever possible.

31. Effective communication between the FCO and international NGOs such as Stonewall is also critical to success. Stonewall is the leading lesbian, gay and bisexual campaigning organisation in Britain and has a wealth of expertise on advancing legal protections for gay people and changing social attitudes. We would therefore be very keen to work with the FCO, and its partners, to identify how our experience can be utilised in an effective and sensitive way. In particular we would be keen to discuss:

- How we can help support diplomats improve their understanding of LGB human rights issues.
- How the UK can support public awareness-raising around LGB equality in different countries.
- How the UK can continue to raise LGB human rights in different international organisations.

*24 May 2013*

## Joint Submission by the International Affairs Department of the Catholic Bishops Conference of England and Wales and the Church England's Mission and Public Affairs Council

SUMMARY

— We welcome both this inquiry and the Foreign and Commonwealth Office's (FCO) commitment to the human rights agenda as demonstrated in the 2012 Human Rights and Democracy Report (HRDR).

— Church networks may be able to support the Foreign Secretary's commendable Preventing Sexual Violence Initiative, but real progress turns on whether this initiative continues to be a priority for the Government beyond its Presidency of the G8.

— We welcome the inclusion of freedom of religion and belief as one of the FCO's six human rights priorities and the practical work the FCO has been undertaking in this area, but we do not consider the 2012 HRDR reflects the FCO's own assessment (with which we agree) that freedom of thought, conscience and belief underpin many other fundamental freedoms.

— We make a number of recommendations designed to encourage consideration of how the report might better reflect this reality, and how the UK's human rights agenda might be advanced.

*Recommendations*

— The FCO should discuss with Church organisations in the UK the ways in which Church networks may be able to contribution to the promotion of the Preventing Sexual Violence Initiative, without compromising their safety on the ground. (para 10)

— The FCO's HRDR for 2013 should include an assessment of current training and other initiatives in terms of their impact on the effectiveness of the FCO's promotion of freedom of religion and belief. (para 15)

— In future FCO HRDRs the reviews of the situation in countries of concern should each include a section on freedom of religion and belief, given in particular the key underpinning nature of this freedom. (para 18)

— The FCO should provide material about the proportion of HRDP funds allocated to projects designed to protect or promote the freedom of religion and belief in 2012, and should include a more detailed breakdown of spending in priority human rights areas in future reports. (para 19)

— The FCO should consider the case for the appointment of a special envoy to encourage a strong international focus on freedom of religion and belief issues and to foster dialogue and understanding, in support of the political track envisaged on pp 56–57 of the 2012 HRDR. (para 19)

— We suggest that future FCO HRDRs should make clear the connection between anti-Semitism and anti-Muslim hatred (pp71–72) and the freedom of religion and belief priority, in a section which would also include anti-Christian (and other religions) activity around the world, and any FCO action taken to spotlight or counter sentiment and activity in these areas. (para 20)

— Future FCO HRDRs should provide a more developed indication of the real-world emphasis attached to lobbying on freedom of religion and belief issues; about where the lead responsibility lies in London between geographical and functional commands; and about how decisions to lobby on particular cases are made. To what extent are posts' Country Business Plans encouraged/required to include proposals in this area? (para 21)

— The FCO should provide the FAC with an assessment of the impact of public reports such as the 2012 HRDR, and comment on whether they consider it is helpful or unhelpful when seeking to promote human rights in countries of particular concern for those countries so to be listed. The FCO should also comment on whether they consider there may be a case for a more confidential dialogue with the FAC and key non-government stakeholders in human rights issues about how best to pursue issues of shared concern in particular political contexts, while acknowledging that any such dialogue would have to be on the basis of trust that confidentiality would be respected. (para 24)

— While acknowledging that the focus of the Committee's enquiry is the FCO's human rights work, it would be useful to know the extent to which in particular situations where there is perhaps a lack of infrastructure or a government presence DFID already work with Christian organisations as partners on the ground, and whether DFID's work to strengthen civil society and empower citizens has any element focused on bolstering the freedom of religion and belief. (para 25)

### INTRODUCTION

1. This submission is the joint work of the Church of England' Mission and Public Affairs Council and the International Affairs Department of the Catholic Bishops Conference of England and Wales.

2. The Church of England's Mission and Public Affairs Council is the body responsible for overseeing research, policy and advocacy on social and political issues on behalf of the Church of England's Archbishop's council. The Council comprises a representative group of bishops, clergy and lay people with interest and expertise in the relevant areas, and reports to the General Synod through the Archbishops' Council.

3. The Catholic Bishops' Conference of England and Wales is the permanent assembly of Catholic Bishops and Personal Ordinaries in the two member countries. The membership of the Conference comprises the Archbishops, Bishops and Auxiliary Bishops of the 22 Dioceses within England and Wales, the Bishop of the Forces (Military Ordinariate), the Apostolic Exarch of the Ukrainian Church in Great Britain, the Ordinary of the Personal Ordinariate of Our Lady of Walsingham, and the Apostolic Prefect of the Falkland Islands.

## Detailed Comments on FCO's Human Rights Work and 2012 FCO Report on Human Rights and Democracy

4. We welcome this opportunity to present our views to the Foreign Affairs Committee on the FCO's important work on human rights and in particular on the freedom of religion and belief. We are glad that promotion of this freedom is one of the FCO's six human rights priorities. We share the FCO's goal of working towards a world where every individual can realise their full potential, material and spiritual.

5. On human rights in general, we welcome the UK's commitment to be at the forefront of the defence and promotion of human rights and democracy in all parts of the world, and its commitment not only to engaging bilaterally (and with EU and other partners) with other governments on such issues, but to deliberations of the UN and other multilateral bodies which are essential if there is to be a successful international rules-based approach to human rights issues and violations.

6. We share the government's hope that this year will see the UK's successful election to the UN Human Rights Council for the 2014–16 period. The single most significant "framing" issue at the UN is the OIC-led Defamation of Religions initiative. As we understand it, this is an attempt to take the idea of the State being under an international obligation to respect and protect the right of individuals to freedom of religion, and recasting it as the right of the State to take action to ensure that individuals respect religions and religious freedom. We hope that the FCO is alert to the dangers that this can lead to repression of both religious minorities and of individuals who act in ways not in accordance with the general mores of the majority. Freedom of Religion or Belief needs to be engaged with as a positive value. It contributes to the realisation of other rights. It should not be a cloak for limiting freedom of expression or privileging some religions over others.

7. We welcome the support the FCO is giving to the UN Special Rappourteur, but we suggest that the FCO gives consideration to whether there is merit in pressing for a return to the drafting of an International Convention on the Freedom of religion or belief, a task which has been on ice at the UN for 45 years. This would require much thought as there is a risk that it could undermine the existing low levels of protection even further. On the other, hand, those protections amount to so little in practice there might be little to lose.

8. We acknowledge the priority the FCO has given to the human rights dimension of crisis situations such as currently in Syria, and the personal emphasis the Foreign Secretary has placed on his Preventing Sexual Violence Initiative. In far too many parts of the world such violence is carried out with effective impunity, and is a dark and disturbing element of many conflicts. It is time for the international community to address this issue with the seriousness it deserves.

9. We hope that the Foreign Secretary's plan to use the UK's G8 Presidency to ensure greater international attention and commitment to tackling the issue of sexual violence in conflict will bear fruit at the UN General Assembly in September. This should be a long-term initiative, outliving the UK Presidency of the G8. As well as access to justice, the initiative should look at prevention of violence before it occurs and HMG should build its capacity and commitment to delivering across a range of interventions. Institutional strengthening to secure access to justice for women will continue to be important but HMG can and should also be working to address gender inequality and attitudes to women and girls that perpetuate violence.

10. In many parts of the world Church networks are the only body effectively able to offer comfort and support to the victims of such violence. We believe that such networks may be of use in the pursuit of this initiative, not least in ensuring that information about such violence is recorded in the hope that this will increase the prospects of individuals responsible for such acts being held accountable, although care would need to be taken to avoid any additional risk to the representatives of those networks in the field (**Recommendation 1**).

11. We should also like to acknowledge in particular the positive impact on the human rights agenda of the UK's persistent efforts in pursuit of an Arms Trade Treaty, and in the development and endorsement of the UN Guiding Principles of Business and Human Rights. Both are critical areas, and the focus on the latter also chimes with the work of the Archbishops of Canterbury and Westminster to reflect with the UK business community on the importance of the ethical dimension of the everyday working world.

12. On the freedom of religion or belief, we welcome the additional focus Senior FCO Minister of State Baroness Warsi has brought to this area, although we note with sadness the assessment in her foreword to the FCO's HRDR based on the work of the Pew Forum on Religion and Public Life that 2012 saw an increasing number of individuals attacked, abused, imprisoned and discriminated against because of their religion or belief.

13. We are particularly concerned that, as recognised in the report, the "Arab Spring" has to date added to the pressures on many religious communities in the Middle East, with the consequences including a substantial

number of Christians leaving the region, even if the long-term hope, and indeed policy aspiration, must be the consolidation of democratic and economic reform in the region.

14. We also value the practical steps the FCO has taken in pursuit of this priority, for instance the continuing use of the "toolkit" first produced in 2009 for staff working in this area in overseas missions. The tool kit remains a valuable instrument but it needs to be updated to reflect the changes that have occurred since the "Arab Spring". We are aware that the EU is currently developing Guidelines on Freedom of Religion or Belief and it is important that these be properly nuanced. Greater transparency in their preparation would be welcome.

15. We similarly welcome the new staff training course to help develop understanding of the major religions and their importance for foreign policy issues, and the establishment of an online FCO forum to discuss the impact and importance of religion in relation to the UK's foreign policy goals. We would find it helpful if next year's HRDR included an assessment of the effectives of such training developments in enhancing the FCO's work on freedom of religion or belief (**Recommendation 2**).

16. While acknowledging the priority the government is giving to freedom of religion and belief, we nevertheless suggest that the FCO's 2012 report does not fully reflect its assessment that freedom of thought, conscience and belief underpins many other fundamental freedoms, and that often when this freedom is under attack other freedoms will be threatened.

17. We fully agree that freedom of religion and belief, including freedom of conscience, is a primary barometer of the social health of a nation. States which respect this freedom are more likely to respect other crucial freedoms, particularly because an individual's sense of his or her identity is generally fundamentally driven by their beliefs and religion. Respect for those beliefs and the primacy of conscience is not therefore not only key to how individuals should relate to each other, but to how States should approach questions of individual rights. And lack of respect for such rights is often a trigger for conflict. From such a perspective flows respect for the dignity of every individual, whether or not those responsible for the direction of a society share our belief that the respect owed to each individual is also because he or she has been created in the image of God.

18. Against this background, we question whether the emphasis given to this area in the FCO's report as a whole reflects the full importance of this particular freedom. We note for instance that the material in the report about "countries of concern" does not always include a section on freedom of religion or belief, although we assume that in countries such as Somalia or Yemen there is no meaningful way in which that freedom could be said to exist for the whole spectrum of beliefs and religions. (**Recommendation 3**).

19. Nor is it possible to ascertain from the report exactly what proportion of the resources for projects under the Human Rights and Democracy Programme (HRDP) has been allocated to this area: it is perhaps indicative that no examples are highlighted in the section of the report (pp 24–26) which highlights the HRPD, even if a few commendable projects are mentioned elsewhere in the text (**Recommendation 4**). In addition, and while we are fully supportive of the work of the Foreign Secretary's Envoy for Post-Holocaust issues, is there not a case for a similar envoy to encourage a strong international focus on freedom of religion and belief issues and to foster dialogue and understanding, in support of the political track envisaged on pp 56–57 of the report (**Recommendation 5**)?

20. We note too the lack of any suggested connection in the report between anti-Semitism and anti-Muslim hatred (pp71–72) and the freedom of religion and belief priority, and suggest this link should be made in future reports in a section which would also include anti-Christian (and other religions) activity around the world, and any FCO action taken to spotlight or counter sentiment and activity in these areas (**Recommendation 6**).

21. It is also difficult to obtain a clear picture from the report about the real emphasis given in eg instructions to missions about how hard they should pursue issues connected to freedom of religion or belief. We appreciate that a "one size fits all" approach is not possible, and that commands in London and Ambassadors at post have to make complex judgments about how best to pursue UK values and interests in particular countries and cultures. But it would be helpful if future reports gave greater granularity about how decisions to lobby on particular cases are made, and about where exactly the lead on such questions lies in London (with the relevant geographical or a functional command?). To what extent are posts' Country Business Plans encouraged or required to include proposals in this area? (**Recommendation 7**).

22. It would also be helpful if in their own response to the Foreign Affairs Committee, the FCO were to give some assessment of the impact of public reports such as the 2012 HRDR. While we are in principle in favour of openness and transparency and welcome the information such reports contain, does the FCO in reality consider it helpful or unhelpful when seeking to promote human rights in countries of particular concern to list them publicly in this way? What is the risk that some states will feel less inclined to engage because of their unhappiness about their designation as a country of concern?

23. We assume that on this point too there is no simple "one size fits all" response, but wonder how the balance of judgment is reached about the exact contents of the report and whether there is a perceived tension between the desirability of shining a full spotlight on the human rights situation in particular countries and tactical considerations about how to promote human rights in those same countries.

24. If so, is there a case, for instance, for the government to seek to develop a more confidential dialogue with both the Committee and key non-government stakeholders in human rights issues about how best to pursue issues of shared concern in particular political contexts, albeit at the cost of some of the detail currently contained in FCO human rights reports, while acknowledging that any such dialogue would have to be on the basis of trust that confidentiality would be respected? (**Recommendation 8**).

25. While recognising that the focus of the Committee's enquiry is the FCO's human rights work, we note the helpful material about the Department for International Development's work on economic and social rights in the report (pp27–28),and would be interested in learning more about the extent to which in particular situations where there is perhaps a lack of infrastructure or a government presence DFID already work with Christian organisations as partners on the ground, and whether DFID's work to strengthen civil society and empower citizens has any element focused on bolstering the freedom of religion and belief (**Recommendation 9**).

*29 May 2013*

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## Written evidence from the Survivors Fund (SURF)

**Survivors Fund (SURF)** is rebuilding the lives of survivors of the Rwandan genocide.

The vision of SURF is a world in which the rights and dignity of survivors are respected.

### Summary of submission

- Survivors Fund (SURF) challenges the assertion that the UN International Criminal Tribunal for Rwanda (ICTR) is "delivering justice to the victims of the Rwandan genocide." The survivor's organisations we represent, assert that the ICTR is failing resolutely to deliver justice to survivors of the genocide in the form of reparation and we call on the FCO to work to address this shortcoming;
- This failure detracts from and undermines the FCO's positive work.

### Introduction

1. This submission is made in response to the Foreign Affairs Committee (FAC) call for submissions in respect of its inquiry into the Foreign and Commonwealth Office's (FCO's) human rights work in 2012.

2. Survivors Fund (SURF) is the principal international organisation representing and supporting survivors of the genocide in Rwanda. Its support extends back to 1994, helping the first survivors to establish themselves into registered organisations in Rwanda, such as AVEGA (Association of Widows of the Genocide). Today, SURF partners with nine survivor's organisations to deliver support to over 300,000 vulnerable survivors of the genocide in Rwanda. SURF advocates, fundraises and helps to develop, manage, monitor and evaluate programmes for these partner organisations, across all areas of need of their membership, from house building to healthcare, and education to employment. Our funders include the UK Department for International Development.

3. All of the work is unified by a fundamental belief in the right of survivors of the genocide in Rwanda to restorative justice, to rebuild their lives. SURF recognises that it cannot deliver all this work alone, and as such leverages partnerships with an array of mission-aligned organisations, such as REDRESS. Together we are working to coordinate the advocacy of survivor's organisations in Rwanda, most recently publishing a Discussion Paper on the Right to Reparation for Survivors of the Genocide in Rwanda.[152] Our current future focus is on securing reparation for survivors of the genocide from the international community by the time of the closure of the ICTR branch of the International Residual Mechanism for Criminal Tribunals (IRMCT) in December 2014.

4. We note that the inquiry takes as its starting point the 2012 FCO Report "Human Rights and Democracy" (the "FCO Human Rights Report") published in April 2013. This submission relates specifically to the content of the report, in as it pertains to omissions relating to issues of justice for survivors of the genocide in Rwanda. Our comments relate to the section on the International Criminal Tribunal for Rwanda (page 51).

*International Criminal Tribunal for Rwanda (Page 51)*

5. Survivors Fund (SURF) applauds the fact that the "UK will continue to support the ICTR's work in tackling impunity and delivering justice to the victims of the Rwandan genocide and to secure its legacy."

6. Whilst the Government of Rwanda has established the FARG ("Fonds National pour l'Assistance aux Rescapés du Génocide") which seeks to provide the most vulnerable survivors with access to medical care, housing and education, it has failed to address survivors' demands for the restitution of their property and compensation for their losses. This is particularly frustrating for survivors as the Government had promised as

[152] See SURF, REDRESS et al "Right to Reparation for Survivors: Recommendations for Reparation for Survivors of the 1994 Genocide Against the Tutsi—Discussion Paper", October 2012: http://survivors-fund.org.uk/wp-content/uploads/2012/11/Right-to-reparation-Final.pdf

early as 1996 that a specific law on compensation would be adopted with a view to establishing a compensation fund, though it has yet to deliver on that promise.[153]

7. It was, however, not only the Government of Rwanda that disappointed survivors' hopes for reparation. The international community has established the ICTR, yet survivors cannot participate in proceedings and claim reparation before the ICTR. Despite proposals made by ICTR judges to the UN Security Council, as well as the interventions of IBUKA (a principal partner of SURF, and the umbrella association of survivor's organisations in Rwanda) before the UN General Assembly, no compensation fund has been created by the UN.

8. For the past three years, Survivors Fund (SURF) and REDRESS, in collaboration with Rwandan civil society, have examined survivors' perspectives and experiences in seeking to obtain reparation. The work has been shaped by the closure of gacaca in June 2012, as well as the ICTR in July 2012, and serious concerns among survivors that with the closure of both mechanisms, avenues for reparations would be closed, too, and their right to reparation would never be met. The need to "turn the page" and to look to the future was emphasised publicly by a variety of officials, yet for the majority of survivors, this was considered to be problematic if not impossible without reparation, in particular compensation and restitution of their property. Justice, according to some survivors, was only seen to be done if reparation formed part of the process, and to date, despite all efforts of the Government of Rwanda and the international community, that has yet to happen.

9. The Report notes that the "UK supports the work of the ICTR in tackling impunity and bringing justice to the Rwandan people."[154] However, Survivors Fund (SURF) and the survivor's organisations we represent, assert that the ICTR has failed resolutely to deliver restorative justice to survivors of the genocide in the form of reparation.

10. The establishment of the ICTR in November 1994, significant as it recognises the gravity and the scale of the human rights violations committed in Rwanda in 1994, had relatively little impact on survivors.[155] The limited mandate of the ICTR does not include a right to reparation and survivors are not entitled to participate in proceedings in their own right. Its statute and rules allow ICTR judges to order the return of any property and proceeds acquired by the criminal conduct of the individual perpetrator, to their rightful owners. While 38 perpetrators have been convicted to date, the Tribunal has not relied upon its authority to order such restitution.[156]

11. Rule 106 of the ICTR's Rules of Procedure and Evidence stipulates that survivors seeking compensation against a perpetrator convicted by the ICTR must apply to a court in Rwanda or "other competent body", and that they may rely on judgments of the ICTR in such proceedings. The judgments of the ICTR are to be considered final and binding as to the criminal responsibility of the convicted person for such injury.[157] In the absence of funds available to enforce any compensation awards, however, this has so far not assisted survivors in Rwanda.

12. The then President of the ICTR in her address to the UN Security Council in October 2002 reminded the Council that "compensation for victims is essential if Rwanda is to recover from the genocidal experience" and that a proposal had been submitted by the ICTR to the Secretary General that victims of the genocide should be compensated.[158] According to the proposal, ICTR judges agreed "with the principle of compensation for victims", yet believed that the responsibility for addressing claims for compensation should lie with other agencies within the UN system.

13. It was feared that for the ICTR to handle compensation claims would severely hamper the everyday work of the Tribunal and would be "highly destructive" to the mandate of the Tribunal, also taking into account that the resources available to the Tribunal would not allow it to properly handle claims for compensation in a timely fashion.[159] The Judges of the ICTR therefore proposed to consider other options, including a specialised agency set up the United Nations "to administer a compensation scheme or trust fund that can be based upon individual application, or community need or some group based qualification".[160]

14. Subsequently, neither the proposal nor the ICTR's judges' call for a greater role of the UN in providing compensation to victims of the genocide were addressed, and no steps were taken at UN level to assist survivors in obtaining compensation. A resolution adopted by the General Assembly on 10 December 2004 on the "[A]ssistance to survivors of the 1994 genocide in Rwanda, particularly orphans, widows and victims of sexual violence" does not address the right to compensation and restitution. Though even that resolution, which has been adopted at consecutive General Assemblies ever since, most recently at the 66th General Assembly in 2011, has never been meaningfully honoured.

[153] See Heidy Rombouts, "Victim Organisations and the Politics of Reparation: A Case-Study on Rwanda", 2004, pp 411–449

[154] Report, page 51

[155] See African Rights and REDRESS, "Survivors and Post-Genocide Justice in Rwanda", November 2008, pp.55–72: http://www.redress.org/downloads/publications/Rwanda%20Survivors%2031%20Oct%2008.pdf

[156] See Article 23 (3) of the ICTR statute and Rule 105 of the Rules of Procedure and Evidence

[157] Rule 106 of the ICTR's Rules of Procedure and Evidence: http://www1.umn.edu/humanrts/africa/RWANDA1.htm

[158] Statement by Judge Navanethem Pillay, President of the ICTR, to the United Nations Security Council, 29 October 2002, at http://www.unictr.org/tabid/155/Default.aspx?id=1086

[159] Letter dated 9 November from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General, U.N. Doc. S/2000/1198, 15 December 2000, ANNEX.

[160] Ibid, page.5.

15. The cumulative annual funding from UN agencies, funds and programmes for survivor's organisations in Rwanda amounts to less than $250,000 annually (less than $1 of aid for each survivor). In contrast, the appropriation of UN funds for the ICTR for the biennium of 2012–13 is $174 million.[161] In total, expenditure on the ICTR has amounted to over $1 billion[162] (equivalent to almost $30 million per suspect convicted). The total sum of support for restorative justice programmes for survivors in Rwanda has amounted to less than one-half of 1% of the ICTR budget.

16. In comparison to the ICTR, Article 75 of the Rome Statute (1998) for the International Criminal Court (ICC) allows for enforcement of restorative justice for survivors of human rights violations. The Trust Fund for Victims (TFV) is the main mechanism for doing so, along with the ICC's legal mandate to require convicted individuals to compensate victims with their own assets which it does in DRC and Uganda.[163]

17. The Trust Fund is an historic institution essential for the realisation of the ICC's progressive mandate towards victims and is an acknowledgment that justice for genocide, crimes against humanity and war crimes cannot be met by retribution alone. It works alongside the Court's reparative function to benefit victims. It acquires its assets from donations made by States and non-State entities.

18. As the Statute does not apply retrospectively, there is no such fund for victims of crimes heard at the ICTR. However there is a mandate for one to be established, as declared in the Rwanda Constitution and UN Resolution A/RES/66/228. Judge Pillay and Judge Byron, both former Presidents of the ICTR, have stated that the lack of reparation for genocide survivors is a serious shortcoming of the ICTR.

19. In March 2004, the UN Secretary General Kofi Annan, who was head of the UN peacekeeping agency at the time of the genocide, acknowledged institutional as well as personal blame for the genocide. Under general rules of international law, the UN as an entity benefits from extensive immunities, which will make it virtually impossible for it to be successfully sued. Yet, the acceptance of institutional failure of the UN in 2004, the proposals made by the ICTR judges, as well as the recognition of moral responsibility by the UN inquiry on the Rwanda genocide, has not resulted in reparation for survivors.

20. In contrast, the UK Government has never accepted any responsibility for the extent of the genocide, nor apologised for its role in limiting intervention, unlike the UN, or the US under President Clinton.[164] The genocide occurred under a Conservative Party Government,[165] and it was under instruction of the Government that the UK Permanent Representative to the United Nations, David Hannay, supported Resolution 912, passed on 21 April 1994, which reduced the UN Assistance Mission for Rwanda (UNAMIR) from 2,500 troops to just 270.[166] Lt-Gen Romeo Dallaire, who led the mission, has always held that a troop presence of only 5,000 could have prevented the genocide, a conviction backed up by the 2005 Report of the Commission for Africa, which noted "Just 5,500 troops with robust peace enforcement capabilities could have saved half a million lives in Rwanda."[167]

21. Apportioning blame though will achieve nothing in rebuilding the lives of survivors of the genocide, which requires aid. Ultimately survivors of the genocide in Rwanda want to be independent and self-sufficient. However, to return them to their socio-economic position before the genocide (and in so doing, deliver restorative justice) requires access to funding to rebuild their houses destroyed during the genocide, to complete education interrupted during the genocide, to re-establish livelihoods lost in the genocide and to ensure access to medical treatment to treat ailments resulting from the genocide.

22. 2014 is the twentieth anniversary of the genocide, and will mark the closure of the ICTR branch of the IRMCT. This presents a unique opportunity to deliver the restorative justice for which the Government of Rwanda does not have the resources, and that the ICTR does not have the mandate. Though it would be of symbolic importance for the UK Government to follow the UN and the US in issuing an apology for its inaction during the genocide, there is a more important gesture possible. As such, we call on the UK Government to support the call for reparation for survivors of the genocide in Rwanda, which truly will deliver justice for the Rwandan people largely denied to them through the limited mandate of the ICTR.

### Recommendations

The FAC should:

— call on the FCO to support the Government of Rwanda in assisting the survivors of the genocide in Rwanda through increase aid for this most vulnerable and marginalised target population, and foster the legislative and fiduciary environment for the enforcement of the rights of genocide survivors to reparation.

[161] See Financing of the International Criminal Tribunal for Rwanda, December 2011: http://bit.ly/JH6VbA
[162] How Rwanda judged its genocide, Phil Clark, Africa Research Institute, April 2012, page 7
[163] See Trust Fund for Victims: http://www.trustfundforvictims.org/two-roles-tfv
[164] See New York Times, 26 March 1998: http://nyti.ms/JHbpir
[165] For further exposition see Linda Melvern in Genocide Studies and Prevention, "The UK Government and the 1994 Genocide in Rwanda", Winter 2007, http://utpjournals.metapress.com/content/k465197778m14430/fulltext.pdf
[166] See Adam LeBor, "'Complicity with Evil': The United Nations in the Age of Modern Genocide", 2006, pp 172–181
[167] See 2005 Report of the Commission for Africa, http://www.commissionforafrica.info/2005-report, page 39

— call on the FCO to support the delivery of the UN General Assembly resolution requesting the Secretary General to encourage relevant United Nations agencies, funds and programmes to provide assistance in the areas of education, medical care, skills training and microcredit programmes aimed at promoting self-sufficiency for survivors of the genocide in Rwanda, which will deliver restorative justice for the Rwandan people denied to them through the limited mandate of the ICTR.

*6 June 2013*

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**Written evidence from Hermitage Capital Management**

Specifically addressing: The performance of the FCO in promoting human rights in safeguarding Britain's national security and advancing British human rights values in the fields of democracy, criminal justice and the rule of law, in relation to the Russian corrupt, criminal, conspiracy responsible for the false imprisonment, torture and death of Sergei Magnitsky and the theft of $230 million.

SHORT SUMMARY

In 2009, Sergei Magnitsky, a Russian lawyer representing the Hermitage Fund, was killed in Russian police custody after exposing a corrupt criminal conspiracy connected to the Russian security services and operating trans-nationally. This conspiracy was responsible for systematic thefts from the Russian treasury, including the theft of $230 million of tax revenue paid by Hermitage Fund's Russian companies. His colleagues in Britain received death threats.

In the four years since Sergei Magnitsky's death, his case has become emblematic of the impunity of Russian officials and the lack of redress for victims of corruption and police abuse in Russia: the Russian authorities have covered up the circumstances of his ill-treatment and killing; they have also protected organised criminals and corrupt officials exposed by him, even promoting some of them and giving them state honours. A number of those criminals and officials have been known to regularly travel to the UK.

As a result, and recognising that the old method of simply "raising" matters with foreign governments, are not sufficient for the protection of national and international security and upholding human rights, proposals for legislative measures were introduced to deny visas and freeze assets of those involved in the Magnitsky's persecution and murder, and the corrupt criminal conspiracy he had uncovered. The USA has adopted the legislation setting out those measures in the "*Sergei Magnitsky Rule of Law Accountability Act of 2012,*" while the OSCE and the European Parliament have recommended that those measures be implemented by members of the OSCE and EU.

In April 2012, the FCO announced that under its new policy it will ban from entry to the UK foreign nationals where credible evidence exists about their involvement in gross human rights abuse. However, there was no indication of who was included on the no-entry list under this new policy. In contrast, the US Government, based on US foreign policy and national security goals, published in April 2013 the "*Magnitsky Sanctions Listing*", which includes 16 Russian officials in the Magnitsky case (http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130412.aspx). These Russian officials are banned from entry to the USA, their assets in the USA are blocked, and U.S. persons are generally prohibited from dealing with them.

To safeguard Britain's national security and improve the promotion of the values of the rule of law, and the accountability for human rights abuse in relation to the Magnitsky case, the British government should:

— Produce a public list of those individuals in relation to whom visa bans are imposed on the basis of credible evidence of their involvement in human rights abuses and high level corruption, including those implicated in the persecution and death of Sergei Magnitsky, in order to "name and shame" those people for their engagement in those activities;

— Consider steps to block assets in the UK of those foreign nationals connected to the Russian corrupt criminal conspiracy and money laundering uncovered by Sergei Magnitsky, and support the efforts of other EU countries to investigate and bring to justice its perpetrators and benefactors.

BRIEF INTRODUCTION

William Browder, CEO Hermitage Capital Management, and leader of the Sergei Magnitsky Justice Campaign

1. Mr William Browder is the CEO of Hermitage Capital Management, investment adviser to the Hermitage Fund which was at one time the largest foreign investor in Russia with US$4.5 billion invested in the Russian economy.
2. William Browder was expelled from Russia in November 2005 after exposing corruption at the Russian enterprises the Hermitage Fund was investing in. He was denied entry to the country and declared "a threat to national security" by the Russian government.
3. In 2007–2008, Mr Browder's lawyer, Sergei Magnitsky, uncovered a massive fraud committed by Russian government officials that involved the theft of US$230 million of taxes which Hermitage

had paid in 2006. After testifying against the officials involved, Mr Magnitsky was arrested and imprisoned without trial by those very same government officials. He was tortured in an attempt to force him to retract his testimony and to falsely incriminate himself and his client in the crimes. Despite the physical and psychological pressure, he refused. For almost a year he suffered horrifying detention conditions, and when this led to a drastic deterioration in his health, he was denied any medical attention despite over twenty requests for assistance. He died on 16 November 2009 at the age of 37, leaving a wife and two children.

4. Since that time, Mr Browder has been leading a worldwide campaign to get justice for Sergei Magnitsky. Actions have included introducing legislation to the US Congress, Canadian and European Parliaments to implement visa bans and freeze the economic assets of those who perpetrated the crimes.
5. In retaliation against these efforts, the Russian state issued an *in absentia* arrest warrant for Mr Browder, has abused international channels by pursuing Mr Browder through mutual legal assistance requests and INTERPOL seeking to track Mr Browder's whereabouts. Furthermore, Russia has initiated a posthumous prosecution of Mr Magnitsky (and *in absentia* of Mr Browder) in a clear attempt to defame his legacy and intimidate his supporters.

### International Action on Magnitsky Case: Examples of actions taken

The mistreatment of Hermitage Capital and its staff leading to the death of Sergei Magnitsky is principally a British matter because William Browder is a British citizen and Hermitage is a British company.

However, the issue has gained international significance and has been taken by numerous governments and international organisations because of the scale of impunity and injustice demonstrating all that is wrong with the rule of law and judiciary in Russia:

1. **United States—**In December 2012, US President Barack Obama signed the "Sergei Magnitsky Rule of Law Accountability Act" into law. This legislation imposes visa bans and asset freezes on individuals identified as complicit in the persecution and death of Mr Magnitsky, as well as other Russian citizens credibly suspected of having committed human rights abuses against human rights defenders. In April 2013, the US Office of Foreign Assets Control named eighteen Russian individuals who have been identified as the subject of sanctions under the Magnitsky Act, including sixteen Russian officials in the Magnitsky case.
2. **Parliamentary Assembly of the Council of Europe—**In February 2012, 53 representatives at the Parliamentary Assembly of the Council of Europe (PACE) from 29 countries co-signed Written Declaration No.49, "The Sergei Magnitsky Case", which urged Russia to prosecute the killers of Sergei Magnitsky without further delay. In the written declaration PACE representatives also called upon the Russian authorities to cease the intimidation of Magnitsky's family and to allow the family an independent medical evaluation, which Russian investigators and courts have nevertheless refused.
3. **OSCE Parliamentary Assembly**—In July 2012, the OSCE Parliamentary Assembly passed a resolution calling on all 57 OSCE member states to impose visa sanctions and asset freezes on those responsible for the false arrest, torture and murder of Sergei Magnitsky, and the corruption he had uncovered. The resolution was approved by an overwhelming majority of the OSCE Parliamentary Assembly.
4. **European Parliament—**The European Parliament has passed three resolutions (December 2010, December 2011, October 2012) calling on all EU member states to impose visa sanctions and asset freezes on the Russian government officials involved in the false arrest, torture and death of Magnitsky. In June 2013, 47 MEPs signed a letter to European Foreign and Home Affairs Ministers urging them to urgently enact sanctions on Russian officials in the Magnitsky case.
5. **EU countries**—During 2011–2013, authorities in Switzerland, Cyprus, Estonia, Latvia, Lithuania responded to Hermitage applications and opened the investigation into the Russian money laundering uncovered and exposed by Hermitage and Sergei Magnitsky, related assets have been frozen in certain jurisdictions.

### UK Actions in relation to the Magnitsky Case

In March 2012, a **Backbench Committee Motion entitled: *"Debate on Human Rights and the death of Sergei Magnitsky"***, co-sponsored by five former Foreign Ministers, including three former Secretaries of State (Sir Malcolm Rifkind, Rt Hon. Jack Straw, Rt Hon. David Miliband) was passed. The motion calls on the government to impose visa sanctions and asset freezes on the Russian officials who falsely arrested, tortured and killed Sergei Magnitsky and then covered up the crime.

Responding to the motion, Under-Secretary of State for Foreign and Commonwealth Affairs Alistair Burt suggested that the government would **wait to see whether the Magnitsky legislation, which was under debate in the two houses of the U.S. Congress, passed in the US** before taking the motion into consideration as a matter of policy.

In December 2012, the U.S. Congress passed a Magnitsky Law by an overwhelming bi-partisan majority vote.

In April 2013, Minister for Europe David Liddington responded during a parliamentary debate on further actions by the UK government in the Magnitsky case, saying:

> *"We do not believe that introducing asset freezes along the lines that the United States has introduced them would contribute to the objective we seek. Asset freezes would also need to meet legal tests. When assets are frozen by the UK or another democracy, they can find that such decisions are challenged in the courts... There would have to be credible evidence that could, if necessary, be tested in a court to justify asset freezes in any individual case."*

These comments indicate a reluctance to take action to protect the UK national security interests from the threat from Russian corruption and organised crime identified in the Magnitsky case.

Despite the legislation enacting the asset freezes being passed in the US and the European Parliament recommending such steps, the Government seems to believe that they can achieve the important foreign policy objectives by merely calling upon the Russian counterparts to deliver justice. The last four years of doing so by the UK government is a testament that this approach does not bring justice and give those freedom to act with impunity and cover up their crimes.

We suggest that publicly banning individuals in relation to whom information exist of their involvement in corruption and organised crime, as well as human rights abuse, would add a vital tool to the UK's current approach to fighting in human rights abuse and corruption. At the same time, the increased transparency regarding the individuals who have been banned would better serve the interests of justice and national security, while blocking their assets would protect the UK financial systems from abuse.

### Recommendations for action by the British Government which we would like the Committee to consider for inclusion in its Report to the House

1. Commit into law the policy of visa bans for foreign human rights abusers and, specifically, the perpetrators of the torture and killing of Sergei Magnitsky, where there is evidence of their involvement in such activities.
2. Commit into law a policy of asset freezes on foreign nationals where there is evidence of their involvement in corruption and transnational organised crime, especially government officials.
3. Make public the names of barred individuals on the UKBA and FCO websites.
4. FCO and UKBA should have better co-ordination in developing visa ban policy and enforcing it. The names of those who are banned from the UK should be flagged to all Embassies and border staff so that they are denied visas before departing for the UK and or denied entry to the UK on arrival.
5. Support the EU efforts to investigate and bring to justice perpetrators and benefactors of the Russian corrupt criminal conspiracy and associated international money laundering uncovered by Sergei Magnitsky and Hermitage.
6. Use the UK's high regard and desirability to foreigners as leverage—not take a back seat in handling major political conflict with Russia. The reason corrupt government officials from Russia, and other countries deposit their money in British banks, buy properties here and send their families here is because they are protected by rule of law, a healthy judiciary and codes of ethics of business practice. The UK should not be backing away from imposing restrictions on people who would seek to use us as a means to "launder and hide" their stolen and illegally gained wealth.

*10 June 2013*

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## Written evidence from Mihir K Sarkar, Campaign for the Protection of Religious Minorities of Bangladesh (CPRMB)

### Violence against minorities in Bangladesh

#### 1. Introduction

In Bangladesh, violence against minorities is not unusual. The recent violence is reminding the Hindus of the barbaric atrocities against them in 1971 and 2001. On 28 February 2013, the International Crimes Tribunal (ICT) sentenced Delwar Hossain Sayeedi, the Vice President of the Jamaat-e-Islami, to death for the war crimes committed during the 1971 Bangladesh Liberation War. Following the sentence, activists of Jamaat-e-Islami and its student wing Islami Chhatra Shibir unleashed lethal waves of attacks on Hindus in different parts of the country. Hindu properties were looted, Hindu houses were burnt into ashes and Hindu temples were desecrated and set on fire. While the government has held the Jamaat-e-Islami responsible for the attacks on the minorities, it has hopelessly failed to protect the lives and properties of the Hindu community.

2. Evidence of atrocities

The violence was widely reported in the local and international Medias. National and International human rights organisations clearly mentioned the deliberate mob attacks on Hindus by Jamaat-e-Islami and its student wing Islami Chhatra Shibir.

On 7th of March 2013 Amnesty International reported a wave of violence on Hindu properties and temples. The attacks were happening all over the country. It was mentioned that more than 40 temples had been destroyed. BBC reported on the following day that a mob attack destroyed the houses and all the belongings of Hindus. In the report it was mentioned that Jamaat-e-Islami was accused of committing the atrocities. A national news paper published in Bengali reported on 23rd of March 2013 that in the past 24 days, 319 Hindu Temples, houses etc have been ransacked in 32 districts of Bangladesh. The blame was put on Jamaat-e-Islami and Islami Chhatra Shibir According to Hindu Buddhist and Christian Unity Council, a human rights activist group, since 28th February 2013 four people from a minority community have been killed and 34 have been injured. 110 temples and 182 houses belonging to minority communities have been destroyed along with 206 business establishments.

3. National and international condemnation

The national and international condemnation put the blame on Jamaat and Shibir. The leaders of the Bangladesh Hindu Buddhist Christian Unity Council and the Bangladesh Puja Udjapan Parishad condemned the atrocities on minorities and they held Jamaat-e-Islami and Islami Chhatra Shibir responsible. They mentioned that Jamaat and Shibir once again engaged in extermination of the minorities from Bangladesh as they did in 1971. On 3 March, the Bangladesh High Court directed the Government to ensure security of the Hindus and repair the temples and houses destroyed in the attacks.

Canadian Foreign Affairs Minister John Baird condemned in the strongest terms the senseless attacks on civilians, most notably those on minorities in their homes and places of worship.

The British High Commissioner in Dhaka, Mr. Robert Gibson expressed his deep concern and resentment on the attacks upon the religious places and the recent attacks in a press conference on Sunday 3 March 2013 held in Dhaka. On 4 March, the United States Department of State expressed concerns over the attacks on Hindu temples and homes in Bangladesh, Dan Mozena US Ambassador to Bangladesh expressed concern about the attack of Jamaat on Bengali Hindu community.

Amnesty International has called upon the Bangladesh government to give better protection to the minority Hindus in the country in the report issued on 6 March 2013. The report titled "Bangladesh: Wave of Violent Attacks Against Hindu Minority", Amnesty said as many as 40 Hindu temples were vandalised in attacks by supporters of an Islamic party. It also said several hundred were rendered homeless as shops and houses belonging to the Hindu community were burnt down over the past week.

At the House of Lords in the British Parliament, Baroness Sayeeda Warsi condemned the attacks on minorities and their places of worship in Bangladesh. She stated that 24 places of worship, 112 homes and about a dozen business establishment belonging to the minority Hindus came under attack. According to Lord Avebury, the recent attacks are a recurrence of the 2001 attack on the Hindus.

Lord Dholakia mentioned in the House of Lords that fundamentalist organisations such as Jamaat-e-Islami and the fanatical student wing Islami Chhatra Shibir are the people who are perpetrating a substantial amount of crime against temples and the religious minorities. He urged the Minister to have a meeting with organisations representing minorities communities in the UK. That meeting never took place.

Lord Trimble asked the questions in the same debate "looking forward to the elections, will there be fair opportunities for minority groups to participate?"

4. Hindu Migration from Bangaldesh

The fundamentalist Islamic forces have a clear agenda to force out Hindus from Bangladesh. They have been very successful and after the latest violence Hindus will migrate to India at an ever increasing number. There will be no Hindu citizen left in Bangladesh after 20 years. "Because we did whatever is needed to force them [Hindus] out of the country and we have always failed to do what was needed to protect them," according to National Human Rights Commission (NHRC) Chairman Prof Mizanur Rahman. The percentage of Hindu population has come down from 13% in 1974 to a single digit figure according to the latest census in Bangladesh.

According to one report nearly 641 thousand Hindus left Bangladesh between 2001 and 2011 following the previous wave of violence in 2001.

5. Why are Hindus leaving Bangladesh?

The answer is they have been suffering continuously time after time. They suffered disproportionately in 1971 and ever since there has been no government initiative to protect their interest in Bangladesh. Every time there is a social or political upheaval, the Hindus suffer. There is no one to protect them. People from all

political parties take advantage of the venerability of Hindus. There are no proper jobs and placement in top army positions. Land grabbing has been going on since 1965 when the Enemy Property Act was introduced. It was changed to Vested Property Act in 1974 but nothing is working to return back the property back to the rightful owners.

### 6. Immediate Action

Hindus are living in fear; they need immediate protection from law enforcement agencies. The Government will have to take initiative to give them assurance of safety and security. They need emergency relief for food and shelter. They need financial help to rebuild their houses, businesses and temples that were damaged during recent attacks. A Judicial Enquiry needs to be set up to identify the perpetrator, and bring them to justice. If there are any political parties behind it, they need to be named. Through a quick justice process the perpetrators need to be put on trial to set an example and to deter others from committing the same crime again.

### 7. Long term Action

It was demanded from the minority community that a Minority Protection Act, in line with British Race Relations Act 1976, to be introduced. This is the only way to give them a legal protection. A Minority Commission should be set up in line with Equality Commission in the UK to monitor the implementation of the Minority Protection Act.

It was also demanded that the Vested Property Act be abolished all together and all the properties be returned to the lawful owners. The Minority Commission will monitor employment and placements in the army and all public sectors. Adequate resources are to be allocated for the welfare and community projects for the minorities. It was demanded that a secular form of education be introduced in the primary and secondary learning system. The infrastructure of breeding of communal minds is to be investigated and made illegal.

### 8. The Rise of Islamic Fanaticism in Bangladesh

Bangladesh is a secular democracy. A recent survey shows that majority of the people would like to remain so. In 1971 the country was born through a bloody struggle from Pakistan when minorities suffered disproportionately. The same force that was responsible for the sufferings of the minorities in 1971, are again behind the recent atrocities inflicted on minorities. They are on trial now in International Crime Tribunal (ICT). Who they are?—The answer is Islamic Fundamentalist. Jamaat-e-Islami, Islami Chhatra Shibir and the recently formed Hefazat -e-Islam.

### 9. Who is Hefazat?

Hefazat-e Islam is a tightly-knit coalition of a dozen or so Islamist organisations. Hefazat coalition are based at more than 25,000 madrassas (Islamic Religious Educational institutions) in Bangladesh.Junaid Babu Nagari, Secretary General of the Hifazat-e Islam is a teacher of Darul Ulum Muinul Alam Madrasa at Hathazari in Chittagong. Emran Majari is the Khatib of Lalbagh Shahi Mosque and also the Principal of Jamia Arabia Khademul Islami Madrasa, Mizanur Rahman is the Vice Principal of the madrasa and Abul Bashar is the Principal of Mirpur Jamiul Ulum Madrasa; both are convenors of Hefazat local committees.

### 10. What are the demands of Hefazat

They would like to make Bangladesh a Taliban ruled country. This Islamic fundamentalist group recently raised a 13 point chartered demand that includes enactment of an anti-blasphemy law with provision for the death penalty, exemplary punishment to all bloggers and others who "insult Islam", cancellation of the country's women development policy, a ban on erecting sculptures in public places, a ban on mixing of men and women in public, a ban on candlelit vigils, ending what they call "shameless behaviour and dresses" and declaring the reformist Ahmadiyas as to be declared "non-Muslims".

### 11. Conclusion

Western counties cannot just ignore this rise of fanatics in a country with a population of 180 million and when minorities are suffering. UK has a historical link with Bangladesh and therefore, not doing anything is not an option. There is no place for minorites and women in the 13 points charter demands of Hefazat. The Bangladesh government needs to act against the 13-point charter of demands according to UN Special Rapporteur Rashida Manjoo. All the western governments can ask the Bangladesh Government to take necessary steps to protect the short term and long term interests of the minorities in Bangladesh. They can highlight the suffering of the minorities. They can also ask all the political parties to stop supporting fundamentalist parties who are inflicting sufferings on minorities. They can take steps to stop the flow of funds going to these fundamentalists to produce brain washed minds only to hate western life style and values.

*12 June 2013*

## Written evidence from the British Parliamentary Committee for Iran Freedom

The all-party British Parliamentary Committee for Iran Freedom continues to actively follow the human rights situation in Iran and the plight of several thousand members of the main Iranian opposition movement currently facing human rights abuses at Camps Ashraf and Liberty in Iraq. Our Committee has urged the Foreign and Commonwealth Office to bring Iran's appalling human rights record before the United Nations Security Council for punitive sanctions against Iranian officials and organs of state terror. Our Committee has also recommended to the FCO to support the relocation of 3,100 Iranian dissidents under harsh conditions and continuous threat of missile attacks in Camp Liberty to Camp Ashraf where they would be better protected from aerial attacks.

## Situation of Human Rights in Iran

### Iran's human rights record at a glance

- 120,000 political prisoners killed under the current regime.
- 30,000 political prisoners massacred within a few months in 1988.
- Hundreds of thousands have been imprisoned and tortured on political grounds.
- 700 people executed in 2012 by the end of November (354 cases were officially announced and 346 went in secret).
- 48% of those executed were between 20 and 30 years of age. Minors formed 6% of those executed.
- 70 people arrested every hour, many on "morality" and political charges.
- 174 types of torture used against political prisoners.

*What has been done so far?*

Human rights violations in Iran have been systematically recorded and reported to UN Special Rapporteurs, the UN High Commissioner for Human Rights, Amnesty International and other international human rights organisations by the main opposition group PMOI and the NCRI coalition in the past three decades. Rights abuses have been brought to the attention of the UN Human Rights Council in every Council session. There have been 59 UN General Assembly resolutions, the latest in December 2012, condemning the Iranian regime for its human rights abuses. International human rights organisations have issued statements and urgent appeals. In August 2011, the UN Human Rights Council appointed a Special Rapporteur on human rights in Iran but he has been denied a visa to go to Iran.

*What needs to be done to stop executions and rights abuse?*

The international community ought to make all trade relations with Iran contingent upon a halt to executions and human rights violations. The FCO must refer Iran's human rights dossier to the UN Security Council and it must push for the perpetrators of human rights crimes in Iran to be brought before the International Criminal Court.

### Recent incidents

In May 2013, more than 2,000 inmates of Ghezel-Hessar Prison went on hunger strike in protest to the use of group executions and the squalid conditions in the prison.

Giti Marami, 34—a mother of one—was lashed 100 times and then hanged at Varamin Gharechak prison on 21 May 2013. Her husband is also on death row after spending 13 years in prison.

Six prisoners were hanged between 18–21 May. Between 13–16 May, Iranian authorities hanged 11 prisoners in the cities of Rasht, Noshahr and Karaj, according to the website of the Gilan Province Judiciary in May. Between 8–9 May, fifteen prisoners were executed in Qezelhessar prison in Karaj, Shahroud and Semnan. From 10–28 April, 40 prisoners, including two women, were hanged. The regime executed 82 prisoners, some in public, from 19 February to 3 March 2013. This is while information on many executions never leaks out of prisons.

Mrs. Maryam Rajavi, President-elect of the National Council of Resistance of Iran, described the savage and unabated trend of arbitrary executions as testimony to the regime's feebleness and distress and its fear of heightening popular uprisings. She added that mass executions in recent days upon Supreme Leader Ali Khamenei's order are organised crimes that are carried out to suffocate the political atmosphere. She said, "The ruling mullahs are benefitting from the UN's silence, appeasement by Western governments, particularly from repeated U.S. requests for direct negotiations, to intensify these murders. Instead of such shameful positions, the UN and western counties should refer Iran's human rights dossier to the Security Council and prosecute Khamenei for repeatedly committing crimes against humanity."

The Ministry of Intelligence and Security (MOIS) arrested a leader of the Assemblies of God Church in Tehran on 21 May. According to reports, MOIS agents took Pastor Robert Assarian to an undisclosed location and closed down the church. Meanwhile, prison authorities in Gohardasht prison have refused to provide medical care to imprisoned pastor Behnam Irani, who has serious health conditions. In Evin Prison in Tehran,

Pastor Saeed Abedini, 36, who was taken to the hospital in April after his condition deteriorated, has been returned to ward 350. Reports indicate that he was returned to the prison without minimum medical care. He was arrested in October 2012 for setting up house churches and sentenced to an 8-year prison term on the charge of "acting against national security".

In Shiraz, imprisoned Christians in Adel-Abad prison suffer from diseases and poor prison conditions. Christian prisoner Vahid Hakany, needs immediate surgery due to gastrointestinal bleeding, but prison guards and the Judiciary in Fars province refuse to provide him with medical services. Vahid Hakany and three other Christians were imprisoned in February 2011 on the charges of participation in in-house meetings, promoting Christianity, communicating with Christian organisations outside Iran, propaganda against the regime and disrupting national security.

On 2 March, a 28-year-old man who had tried to kill himself the previous night after suffering years of abuse in prison was hanged by prison authorities despite being in critical condition due to the suicide attempt.

### Iran steps up arrests, torture, executions: U.N.

Iran has stepped up executions of prisoners including juveniles as well as arrests of dissidents who are often tortured in jail, sometimes to death, the United Nations reported on 28 February 2013.

In twin reports issued in Geneva, U.N. Secretary-General Ban Ki-moon and the U.N. special investigator on human rights in Iran, Ahmed Shaheed, voiced concern at what they called an apparent rise in the frequency and gravity of abuses in Iran.

"The Secretary-General remains deeply troubled by reports of increasing numbers of executions, including of juvenile offenders and in public; continuing amputations and flogging; arbitrary arrest and detention; unfair trials, torture and ill-treatment; and severe restrictions targeting media professionals, human rights defenders, lawyers and opposition activities, as well as religious minorities," Ban reported.

The Islamic Republic, which is under economic sanctions for its disputed nuclear program, has failed to investigate "widespread, systemic and systematic violations of human rights", Shaheed's report said.

He called for the "immediate and unconditional release" of detained human rights advocates, journalists and lawyers.

Dozens of journalists, bloggers and activists have been arrested in the past few months, Shaheed said. Lawyers defending such figures had been targeted, including Abdolfatah Soltani who was arrested in 2011 and is now serving a 13-year sentence.

In a case that stirred international outrage, blogger Sattar Beheshti was arrested last October after receiving death threats and died some days later in prison. Shaheed said:

> "An informed source communicated that Mr. Beheshti was tortured for the purpose of retrieving his Facebook user name and password, that he was repeatedly threatened with death during his interrogation and that he was beaten in the face and torso with a baton."

Torture by blunt instruments, including truncheons, and rapes and electric shocks have been reported in Iran, he added. Iranian authorities should stop imposing the death penalty on juveniles, banned under international law, both reports said. "There has been a dramatic spike in public executions in Iran," Ban said. Most took place at dawn in front of crowds.

### Iranian regime denies political prisoner urgent hospital treatment for cancer

17 March: A political prisoner suffering from cancer has been refused medical treatment in hospital by officials in the city of Tabriz, north west Iran. Mohammed Jarahi—who is serving five years for "anti-regime" activities—needs urgent treatment for a highly aggressive thyroid cancer. Mr Jarahi was arrested along with other student activists in 2012 in Tabriz.

### Political Prisoner pressured to dismiss his lawyer

13 March: Authorities in Tehran's notorious Evin Prison have received orders from the Ministry of Intelligence and Security to put pressure on political prisoner Abdulreza Ghanbari who is on death row to dismiss his lawyer. Ghanbari, a teacher, was arrested during the 27 December 2009 protests in Tehran.

### Wife and daughter of slain political prisoner arrested

3 March: Agents of the Ministry of Intelligence and Security arrested the wife and daughter of slain political prisoner Mansour Radpour and transferred them to an MOIS branch in Karaj on 26 February. Mansour Radpour, a PMOI activist, 44, father of two, was slain on 21 May 2012 in Gohardasht prison, after enduring five years detention and standing up against all sorts of tortures and pressures in order to make forced confessions. In 2007, a few months after travelling to Camp Ashraf, Mr Radpour was arrested for filming a workers' protest in Iran.

In February many families of PMOI supporters and Camp Liberty residents were arrested by the MOIS including Mrs. Akram Sanjari and her 15 year old son, Milad Misagh nejad, Mrs. Dina Karami and her 16 year old son, Hanif, Hassan Sadeghi, his wife Fatemeh Mossana and her 17 year old son, Nima, Asef Rezaian, 19, son of Teymour Rezaian, a political prisoner of the 1980's.

### Political prisoner boycotts regime's courts

8 March: Political prisoner Ali Moezzi, father of two Camp Liberty residents, who is presently in Evin Prison, declared that he will not attend any of the regime's sham courts and will not request a re-trial. Moezi—a political prisoner from the 1980's and suffering from kidney disease—is currently in prison for visiting his two children in Camp Ashraf in Iraq.

### A prisoner killed under torture

1 February: The regime's henchmen tortured to death Amir Mousaei, 38, in prison in the southern city of Borazjan on 1 February. Mousaei, a father and a respected athlete, was being chased for a long time by agents of the MOIS and Revolutionary Guards (IRGC).

### Iran branded one of the world's top enemies of the Internet

12 March: Iran under the mullahs is one of the world's five "state enemies of the Internet" for conducting online surveillance that results in arrests and human rights violations, a new report has revealed. The mullahs' paranoid regime was named alongside countries like Syria and China as a nation that monitors the Internet to target dissidents and critics, the scathing study by Reporters Without Borders said. In the case of Iran, the dictatorship had taken surveillance "to a whole new level" by developing its own internal national Internet, according to the report published to mark World Day Against Cyber-Censorship on 12 March.

### Majority of British MPs announce support for Iranian Resistance

3 June 2013: A majority of British MPs and members of the House of Lords have announced their support for the Iranian Resistance coalition NCRI and called on the United Nations to guarantee the security of 3,200 Iranian dissidents in Camps Liberty and Ashraf in Iraq.

A cross-party "statement on Iran" was signed by the Parliamentarians ahead of a major gathering of Iranians in Paris on 22 June calling for democratic change in Iran. The event, "Onward to Freedom", will be attended by several hundred dignitaries and lawmakers from around the world, including a delegation from the British Parliamentary Committee for Iran Freedom.

The MPs and Peers said: "We strongly support the 10-point plan proposed by Mrs Maryam Rajavi, President-elect of the National Council of Resistance of Iran, and urge our government to do so."

"We condemn the systematic violation of human rights in Iran and are strongly disturbed by the regime's secret nuclear programme and its terrorist involvements in the region and the world.

"We call on our government and the UN Secretary General to refer Iran's human right dossier to the Security Council and call for prosecution of the perpetrators of crimes against humanity in Iran," the statement said, adding that Iranian people and the international community desire democratic change in Iran in 2013.

The MPs and Peers expressed deep concern at the security of the Iranian refugees at Camp Liberty, members of the main Iranian opposition.

On 9 February 2013 the camp was attacked with 40 missiles which resulted in the death of 8 people including a woman and injuries to over 100.

"The most urgent issue is the security of the residents in Camp Liberty who could face similar tragedies at any moment.

"We urge the UNHCR to immediately return them to Camp Ashraf, their home of 26 years, which is much more secure against such attacks, being 80 times larger than Liberty prison, from where they can be transferred to third countries," the statement added.

Maryam Rajavi's Ten-Point Plan Platform for Future Iran:

1. *In our view, the ballot box is the only criterion for legitimacy. Accordingly, we seek a republic based on universal suffrage.*
2. *We want a pluralist system, freedom of parties and assembly. We respect all individual freedoms. We underscore complete freedom of expression and of the media and unconditional access by all to the internet.*
3. *We support and are committed to the abolition of death penalty.*
4. *We are committed to the separation of Church and State. Any form of discrimination against the followers of any religion and denomination will be prohibited.*

5. *We believe in complete gender equality in political, social and economic arenas. We are also committed to equal participation of women in political leadership. Any form of discrimination against women will be abolished. They will enjoy the right to freely choose their clothing. They are free in marriage, divorce, education and employment.*
6. *We believe in the rule of law and justice. We want to set up a modern legal system based on the principles of presumption of innocence, the right to defense, effective judicial protection and the right to be tried in a public court. We also seek the total independence of judges. The mullahs' Sharia law will be abolished.*
7. *We are committed to the Universal Declaration of Humans Rights, and international covenants and conventions, including the International Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Elimination of all Forms of Discrimination against Women.*
8. *We recognise private property, private investment and the market economy. All Iranian people must enjoy equal opportunity in employment and in business ventures. We will protect and revitalise the environment.*
9. *Our foreign policy will be based on peaceful coexistence, international and regional peace and cooperation, as well as respect for the United Nations Charter.*
10. *We want a non-nuclear Iran, free of weapons of mass destruction.*

**An update on the situation in Camp Liberty and Camp Ashraf in Iraq**

MISSILE ATTACKS AGAINST CAMP LIBERTY

On 9 February 2013, Camp Liberty was attacked with rockets and missiles, leaving 8 residents, including a woman, dead and 100 people injured. Aid ambulances were not available in the early hours of the attack. The electricity generator of the Iraqi medical clinic in the camp was also hit. Iraq's prime ministry ordered Iraqi forces to prevent the transfer of the injured to hospitals with the few vehicles the residents had brought to Liberty from Camp Ashraf.

In the past year, despite the residents' insistence and frequent approaches to US and UN officials, the government of Iraq cruelly prevented the transfer of the residents' medical equipment from Ashraf to Liberty.

Camp Liberty is located at the heart of a military zone and is not accessible to anyone without the agreement of the Iraqi government. The missile attack took place from within the military zone. Eight convoys of the residents which were transferred from Ashraf to Liberty in 2012 were stopped at 7 checkpoints and carefully searched with equipment and trained police dogs.

On 15 April, at least 5 explosions took place in the surroundings of Camp Liberty. According to reports from news agencies, the explosions took place near Baghdad Airport, in an area just near Camp Liberty. Due to the explosions, a group of residents and patients who were on their way to hospital, and among them patients with severe cancer cases, were forced to return to the camp. Multiple blasts also shock Camp Liberty on the evening of 10 April. On 29 April, 20 more rockets hit Camp Liberty but fortunately resulted in no casualties.

The explosions show that the residents are easy targets for rocket attacks and are based in an unsafe area facing non-stop assaults and explosions.

The Government of Iraq (GoI) does not allow the residents to leave the camp, nor does it allow their relatives, lawyers, MPs and journalists from entering the camp. UNAMI chief Mr. Martin Kobler has failed to publicly press Iraq to grant freedom of movement to the residents and international access to the camp. The UN Working Group on Arbitrary Detention has twice in the past year described the camp as a "prison".

On April 18, the National Council of Resistance of Iran revealed in statement that "The Minister of Justice of the Iraqi government of Nouri al-Maliki has traveled to Tehran on April 17 to receive orders from the Iranian regime to target members of the People's Mojahedin Organization of Iran (PMOI/MEK) in Ashraf and Camp Liberty, as well as orders against Iraqi dissidents. The day before leaving for Tehran, Hassan al-Shemeri, announced in Baghdad the execution of 21 Iraqi political prisoners and added that the executions would continue even if it made Iraq becomes the world's number one country in terms of executions … On the same day, the IRGC affiliated Fars news agency quoted the Iranian regime's justice minister, telling Shemeri: "We are most thankful to Iraq for its measures against the PMOI and their eviction. If the Iranian people loath American behavior, one of the reasons is the double standards of that country's leaders vis-à-vis terrorist grouplets, particularly the PMOI(MEK)." Moslehi, explaining the aims of his visit, said on April 2: "The following up the PMOI expulsion from Iraq will be specifically be addressed on the trip. We insist that this group be removed from Iraq as soon as possible. And with coordination already in place, God willing, this group will be soon removed from Iraq." (Iranian regime state-run TV- April 2)"

"RETURN US TO ASHRAF", IRANIANS IN CAMP LIBERTY TELL BAN KI-MOON

15 March: In a joint letter to UN Secretary-General Ban Ki-Moon, over 3,000 Iranian dissidents in Camp Liberty, Iraq, said: "More than one month after the missile attack, we have repeated time and again that our most urgent issue is immediate provision of security."

"Continuation of interviews in Liberty... hides the truth and portrays a wrong image of business as usual and as if matters are being pursued in the right path. None of us accept this dishonorable attitude that leaves the lives of other residents in danger."

The residents said: "The only solution is our immediate return to Ashraf which is relatively safer as it is eighty times larger than Liberty with concrete buildings as well as equipped bunkers that we built ourselves. Liberty's polluted environment and extremely unsanitary conditions due to a broken down sewage system and overflow of sewage tanks, outbreak of infectious diseases, and the medical siege and crisis doubles the need to transfer residents to Ashraf."

On 13 March, Hamid Rabi, who was wounded in the 9 February rocket attack on Camp Liberty, died in a hospital in Baghdad after suffering for 33 days. He was the 8th resident to lose his life in the attack. Mr Rabi was a political refugee in Germany and a permanent resident of that country. German officials had also interviewed him on 11 December 2012.

Following his injury, the residents' representatives requested his immediate transfer to Germany. Moreover, the National Council of Resistance of Iran, in writing assumed all expenses for his transfer, residence and medical treatment in Germany. This could be done if only the German Embassy in Baghdad extended his passport or gave him a permit to enter Germany.

Failure to transfer a critically wounded resident, who had both a refugee passport and permanent residence status in Germany, vividly shows that while 2,000 residents have been interviewed by the UN, it is seriously dangerous to keep the residents in the Liberty killing field on the pretext of continuing with the interviews and transfer process to third countries. This only paves the way for further slaughters. This is a trap laid for the residents, United Nations and the international community one and a half years ago by Martin Kobler in a plot to implement the wishes of the Iranian regime and Government of Iraq.

On 10 April, Liberty residents wrote a joint letter (with 3,087 signatures) to the UN Secretary General and the UN High Commissioner for Refugees stating: "We officially request that you prohibit Martin Kobler from interfering in any aspect of our affairs. There is ample evidence that he is cooperating with the dictatorship in Iran on our file. We have no trust in him."

Months after the missile attack on Camp Liberty and while threats by the Iranian regime and its proxies in Iraq for future attacks on Liberty continue, the Iraqi government stonewalls the least protective measures in the camp, including returning the protective T-walls. It does not allow a single T-wall into the camp. UNAMI military experts have explicitly stated that since residents are stationed in trailers, the only thing that may reduce potential casualties caused by rocket or mortar attacks are T-walls. With the entry of residents to Liberty in February 2012 and in subsequent weeks, Iraqi forces expeditiously removed 17,500 T-walls from Camp Liberty despite the residents' protests and thereby intentionally left the containers vulnerable to any attack.

Months after the missile attack, Iraq has not yet permitted the residents to bring their protective helmets and vests from Ashraf. At the time that Ashraf was protected by U.S. forces, in the framework of defence and protection arrangements agreed to by the Americans, the residents had this gear. The residents have not even been allowed to bring picks, shovels and sandbags to Liberty to build rudimentary trenches.

### The medical condition at Camp Liberty

Mr. Reza Nasiri, 46, a resident of Camp Liberty, passed away in a hospital in Baghdad on 24 April due to lack of access to medical services, delay in his transfer to hospital and obstructions created in his treatment.

When he was transferred to hospital last December, Iraqi secret police under the command of the office of the Iraqi Prime Minister caused obstructions in his treatments. In a letter to Gyorgy Busztin, Martin Kobler's deputy, on 12 December, he wrote: "I, Reza Nassiri Taymour. I suffer from acute kidney problem but in the months I have been in this camp I am facing a shortage of my medicine. Finally yesterday, I went to Baghdad. I should say first that from the outset we faced a wave of ill treatment, insult, humiliation, and barbaric behaviour. The agent accompanying us from the intelligence... He obstructed my tests at the hospital under the pretext that it is 12:30 and administrative working hours is over. In particular he told a nurse that "don't attend to them"... he refused to let us go to the office of the head of the hospital to resolve any problems with him."

He wrote on 13 December 2012 to the UNAMI Human Rights Officer and the UNHCR representative: "as a patient in camp Liberty my sole desire is to enjoy adequate medical services within the framework of international human rights laws, and we should have free access to medical services not treated as prisoners and I believe that you as humanitarian organisation can change this situation that Iraqis have created."

On 13 April 2013, Camp Liberty resident Mohammad Hossein Barzmehri died in the Iraqi clinic in the camp. Mr. Barzmehri suddenly fainted at 7:45 am (Baghdad local time). He was immediately taken by his friends to the Iraqi clinic in the camp. But the clinic was not at all prepared at the time. The clinic generator was not on, and none of the electrical facilities were in operation. The residents quickly turned on the generator and took the patient to the emergency room. But there was no Ambu bag, Airway, Electric Shock and Suction devices and others facilities needed. The residents transferred electric shock and suction devices from the ambulance in the clinic to the emergency room, but they did not work either. Finally, the patient died before minimum medical procedures being performed on him. The Iraqi clinic physician has stated stroke as the cause

of death. Despite repeated requests made by the residents to the Iraqi government, the UN and the US, the residents' medical facilities in Ashraf have not been transferred to Camp Liberty.

The residents are suffering from a lack of medical services and the Iraqi clinic, made up of three worn-out trailers, lacks basic medical equipment and even minimum facilities of a village clinic. Iraq prevents the residents from transferring their own medical equipment from Camp Ashraf to Liberty, and yet, the Iraqi clinic in Liberty lacks rudimentary equipment needed to deal with emergency cases, and the residents have no free access to medical services. This clinic does not have suction apparatus, airway tube, laryngoscope set and end tracheal tube, D.C shock device, Adrenalin and Zantac injection, IVG-tube, CV Linen set and many other equipment and services that could be found in any small clinic.

There has been an outbreak of dangerous diseases in Liberty such as haemorrhage fever and infectious meningitis, which according to specialist doctors, is due to the unsanitary conditions of the camp worsened by the effects of the rocket attacks which have upset the ecological balance at Liberty. The latest case was the death of Mansour Koufei on 12 March at the Iraqi clinic in Liberty. Liberty residents have repeatedly warned U.S. and UN officials, especially the World Health Organization, about the unacceptable hygienic conditions of Liberty as well as the lack of medical equipment in the camp.

The goal of the Iranian regime and the Government of Iraq is to inflict further casualties on the residents in later attacks. General James Jones, President Obama's former National Security Advisor, reiterated that the situation at Camp Liberty is worse than Guantanamo prison. (CNN, 11 March 2013)

Since the missile attack, the NCRI has repeated time and again that the most urgent issue is immediate provision of security for the residents. Continuation of interviews in Liberty and the very slow method of resettlement which is consistent with the Iranian regime's will is not the solution to the vital issue of the residents' collective security, and in fact it increases the dangers for the greater majority that will remain in Liberty for a long period.

Therefore, since 9 February, the residents and the Resistance have been pressing for two options; collective transfer of all residents to the United States, albeit temporarily, or a return to Ashraf and the continuation of RSD (The Refugee Status Determination) and gradual resettlement from there. The Resistance and the residents would offer maximum cooperation with the UNHCR in implementation of either of these options.

The US government had signed an agreement with each and every resident and took responsibility for their protection until their final disposition. In its statement of 29 August 2012, the US State Department reiterated the US government's commitment on "the safety and security of the residents throughout the process of their relocation outside of Iraq."

The Refugee Status Determination process, which has been covered with blood and has become impossible in Liberty, could continue in Ashraf. This meets the "UNHCR Manual on Security of Persons of Concern" that was published in 2011 and is applicable to the current situation in Camp Liberty; it specifies in Section 1.7 "If the host government is unable or unwilling to provide adequate security and cannot guarantee the safety and welfare of persons of concern, consider the merits of relocating the camp or settlement population."

### Plans to confiscate the Ashraf residents' property

Upon UNAMI's proposal, Senator Robert Torricelli and Professor Steven Schneebaum, legal representatives of Ashraf residents for solving issue of Ashraf residents' property, visited Iraq from 1–4 January 2013.

In several correspondences between the residents' representative outside Iraq, the residents' legal representatives, US government and UNAMI officials, the framework of this trip was agreed upon beforehand. The framework included: meetings with U.S., UNAMI and Iraqi officials; visits to Ashraf and Liberty; meeting and signing contracts with Iraqi lawyers on receiving advice on Iraqi laws; the negotiations include all movable and immovable property.

However, no Iraqi government official met with the legal representatives and they were not permitted to visit Camps Ashraf and Liberty. Senator Torricelli and Professor Schneebaum could only meet a group of seven residents from Liberty outside the Camp. They were ready to extend their stay in Iraq, had there been an opportunity to meet and discuss the issue with the Iraqi officials, but were told it would not be possible.

Before leaving the United States for Iraq, legal representatives of the residents were told that most probably they would meet Maliki's National Security Advisor Faleh Fayad, or Maliki's political advisor George Bakoos. But UNAMI in Baghdad said Iraqi officials would not meet with anyone who would represent the PMOI (MEK) except Iraqi lawyers. Legal representatives considered this a betrayal of the previous commitment and urged UNAMI and the U.S. government to intervene to facilitate the meeting. The Iraqi government seeks to plunder the residents' property without paying any compensation.

Iran's Minister of Intelligence visited the Iraqi capital Baghdad in early April for talks that included the "serious follow-up" of the expulsion of the PMOI from Iraq.

Arriving in Baghdad on 1 April, Heydar Moslehi met with Faleh Fayyaz, the national Security advisor of Nouri al-Maliki's government in Iraq. Following the meeting, Moslehi told the Iranian regime's state-run TV: "The serious follow-up of the expulsion of the PMOI is a particular issue that will be discussed. We are

determined to expel this group from Iraq and with the co-ordination in place, we hope that this group will be expelled from Iraq. And their fate will be determined as soon as possible. … "We have 35 years experience in fighting terrorism and we are ready to provide our expertise to immediately establish full security for the people of Iraq."

A day earlier, in a letter to Mrs Maryam Rajavi, the President-elect of the NCRI, Martin Kobler threatened another attack on Ashraf by Iraqi forces. Mr Kobler wrote: "The government has now decided to go ahead with the legal procedures to close Camp Ashraf. Please note that we do not in any way associate ourselves with the procedures of the government of Iraq."

The GoI has for more than a year prevented the residents from transferring most of their communications tools, such as mobile phones, to Camp Liberty. UNAMI, under the leadership of Mr. Kobler, has failed to make any public appeal to Iraq to lift this bar.

The FCO and UN must publicly demand of Iraq to lift its restriction on MPs and journalists wanting to visit Camp Liberty.

According to Iranian state-media, Mr. Kobler has discussed the future of Liberty residents with Iranian officials in his visit to Tehran, in violation of the rights of refugees facing persecution under international law. Mr. Kobler has never publicly denied these reports.

Members of our cross-Party committee support the call on UN Secretary Ban Ki-moon to sack SRSG Martin Kobler and appoint a specialist committee to investigate his conduct. We further demand that Camp Liberty residents be urgently returned to Camp Ashraf, their original home, which is 80 times larger and where their security against rocket attacks can be better guaranteed.

*10 June 2013*

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## Written evidence from Freedom from Torture

**Note: This submission is focused on the government's response to mounting evidence about the risk of torture or ill-treatment for certain categories of Sri Lankan Tamils returning from the UK.**

### Summary of recommendations

Freedom from Torture recommends that:

- The Committee should, when taking oral evidence from Ministers for this inquiry and in its report, underscore the unfortunate international precedent which would be set if the UK continues to insist on disclosure by respected NGOs such as Freedom from Torture of the identities of victims included in their research before the conclusions of such research can be accepted for policy purposes.
- The Committee should use this inquiry to get to the bottom of what Ministers and senior officials in the Foreign and Commonwealth Office (FCO) and Home Office knew about evidence of torture or ill-treatment of Tamils forcibly removed from the UK to Sri Lanka and why statements confirming that there was no "substantiated" allegations continued to be made throughout 2012 and early 2013 despite the mounting evidence. In particular, the Committee should:
  - (i) Ask the government to disclose (a) the number of Sri Lankan cases in which allegations of torture or ill-treatment following removal from the UK in the post-conflict period have been found credible by the UKBA or Tribunal; and (b) the number of these cases involving Tamils;
  - (ii) Urge the government to correct any misleading statements that there are no "substantiated allegations" of abuse on return of refused Sri Lankan Tamil asylum seekers;
  - (iii) Recommend a cross-departmental review by the FCO, Home Office and, because it is responsible for the conduct of the Treasury Solicitor's Department, the Attorney-General's Office of the government's handling of evidence of torture or ill-treatment of Tamils returning to Sri Lanka from the UK. The review should be led at board management level in each department and should involve input from relevant NGOs. The terms of reference for this review should be agreed with the Foreign Affairs Committee and the Home Affairs Committee and the results delivered to these committees for scrutiny.
- British High Commission officials should be required to attend the airport in Colombo to meet all forced returnees arriving by scheduled flights and monitoring should be conducted to ensure that all returnees, whether arriving by scheduled or charter flight, arrive safely at their destination after leaving the airport. Long-term monitoring arrangements should also be put in place. Responsibility for investigating allegations of post-removal ill-treatment in Sri Lanka and elsewhere should be transferred from Migration Delivery Officers to a post or body that is wholly independent of the Home Office.

## 1. Introduction

1.1 Freedom from Torture, formerly known as the Medical Foundation for the Care of Victims of Torture, is a UK-based human rights organisation and one of the world's largest torture treatment centres. We are the only organisation in the UK dedicated solely to the care and treatment of survivors of torture and organised violence.

1.2 Since our foundation 28 years ago, more than 50,000 people have been referred to us for rehabilitation and other forms of care and practical assistance. We have centres in London, Manchester, Newcastle, Birmingham and Glasgow and a small one in Leeds (for Yorkshire and Humberside). Ninety-five percent of our clients are, or have been, refugees or asylum seekers.

1.3 Freedom from Torture makes this submission in response to the Committee's oral evidence session on 11 June 2013 and in particular the discussion about **the government's response to mounting evidence about the risk of torture or ill-treatment for certain categories of Sri Lankan Tamils returning from the UK**.

1.4 This issue straddles the responsibilities of both the Foreign and Commonwealth Office (FCO) and the Home Office. While responsibility for asylum country policy rests with the Home Office, this policy is heavily based on FCO assessments of the country situation, including information supplied by the British High Commission in Colombo, and issues connected with the removal of refused asylum seekers are informed by and impact on the bilateral UK-Sri Lanka relationship which is managed by the FCO.

1.5 We recently provided written and oral evidence about this matter to the Home Affairs Committee in the context of its ongoing asylum inquiry, the terms of reference for which include a specific focus on "*the prevalence of refused asylum seekers who are tortured upon return to their country of origin and how the UK Government can monitor this*".

1.6 We encourage the Foreign Affairs Committee and the Home Affairs Committee to coordinate their scrutiny of the handling of this issue by both FCO and the Home Office to ensure the most robust analysis possible of any government failings and the lessons that should be learned from these to ensure improved performance in future.

1.7 Our submission focuses on evidence of torture or ill-treatment of Sri Lankan Tamils on return from the UK; the government's refusal to amend its policy to reflect this evidence including the dangerous international precedent set by demands for NGOs to disclose the identities of the victims in our research samples; and the role of the British High Commission in monitoring the safety of forced returnees to Sri Lanka.

## 2. Freedom from Torture evidence of torture or ill-treatment of Sri Lankan Tamils on return from the UK

2.1 Freedom from Torture has evidence drawn from our clinical work that certain categories of Tamils returning to Sri Lanka from the UK face a real risk of torture or ill-treatment and that the UK's international legal obligations—including under Article 3 of the European Convention on Human Rights, Article 3 of the UN Convention Against Torture and Article 7 of the International Covenant on Civil and Political Rights—may have been breached in a number of specific cases.

2.2 We were first alerted to this risk when compiling evidence of post-conflict torture in Sri Lanka for the examination of Sri Lanka by the UN Committee Against Torture (CAT) in November 2011. Of the 35 cases profiled in the forensic evidence we presented to CAT, nine involved torture following *voluntary* return from the UK.[168] In six of these cases, the individual had returned from the UK after the end of the civil war (four in 2009, one in 2010 and 1 in 2011), and in the remaining three cases the individual had returned earlier. In a briefing published on 13 September 2012 ("September briefing"), we published further details about these six cases alongside 18 new cases involving torture following voluntary return from the UK since the civil war ended, usually for family reasons.[169] Since publication of that briefing, a minimum of 6 other similar cases have been referred to us for clinical treatment services.

2.3 **In at least 12 of the 24 cases covered in our September briefing**, ten of which were forensically documented by our Medico Legal Report service and for which we therefore had fuller information, **the individual reported that they were interrogated about their own activities or the activities of other Tamils in the UK.** For example, individuals were interrogated about Liberation Tigers of Tamil Eelam ("LTTE") contacts, fundraising and/or protest activities in London. We suggested in the briefing that the Sri Lankan authorities' interest in Tamils returning from the UK could be attributable to:

(i) evidence obtained by the authorities or assumptions or suspicions about the activities of the particular individual in the UK connected with the LTTE or otherwise considered to be subversive; and/or;

[168] "Freedom from Torture submission to the Committee against Torture for its examination of Sri Lanka in November 2011", page 4, available at http://www2.ohchr.org/english/bodies/cat/docs/ngos/FFT_SriLanka47.pdf.

[169] Note that six of the new cases presented in this briefing were documented via our medico legal report service and twelve were referred to us, mainly by health and social care professionals in the UK's National Health Service or voluntary sector, for clinical treatment services. See Freedom from Torture, "Sri Lankan Tamils tortured on return from the UK" (13 September 2012) available at http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf.

(ii) an attempt by the authorities to acquire intelligence about the activities of the Tamil diaspora community in the UK, including any activities that could facilitate a resurgence of the LTTE or which the authorities consider to be in any other way subversive; and/or

(iii) suspicions on the part of the authorities about the Tamil community in the UK in particular, giving rise to additional scrutiny of those who enter Sri Lanka from the UK during routine security screening conducted at the airport or thereafter and a risk of subsequent detention and interrogation about the activities of the individual or other Tamils in the UK; and/or

(iv) an attempt by the authorities to terrorise the Tamil diaspora community in the UK as a means of punishing it for any past support for the LTTE and/or to discourage it from any efforts to revitalise the LTTE from the UK or otherwise organise opposition to the Sri Lankan government.

2.4 We recognise that the 30 *voluntary* return cases referred to above do not themselves involve any violation of the UK's non-refoulement obligations but they reveal a *pattern with respect to risk* which should be reflected in the UK's asylum policy to ensure individuals falling within the scope of the demonstrated risk are not *forcibly returned* to Sri Lanka in breach of these obligations (see section 3 below). After careful analysis of these cases, we described the risk in our September briefing as follows:

> *"Sri Lankan Tamils who in the past had an actual or perceived association at any level with the LTTE but were able to leave Sri Lanka safely now face risk of torture on return. The cases demonstrate that the fact the individuals did not suffer adverse consequences because of this association in the past does not necessarily have a bearing on risk on return now. It is a combination of both residence in the UK and an actual or perceived association at any level with the LTTE which places individuals at risk of torture and inhuman and degrading treatment in Sri Lanka."*[170]

2.5 In addition to these 30 voluntary return cases, Freedom from Torture is also involved in three cases of torture or ill-treatment of Tamils following *forcible* return to Sri Lanka from the UK in the post-conflict period. One of these cases is the subject of proceedings in the European Court of Human Rights.[171] We are able to disclose to the Committee details of another case in which the British High Commission was heavily involved, presented as a case study below.

*Case study—Ill-treatment of a Freedom from Torture client after forcible return to Sri Lanka from the UK in February 2012*

This case involves a Freedom from Torture treatment client who was removed from the UK in February 2012 after an unsuccessful asylum claim.[172]

Our client, who was removed on an ordinary *scheduled flight*, was held for some 20 hours on arrival at Colombo airport. During this time, reports reached us that he was being held by Sri Lanka's Criminal Investigation Department, that he had been beaten and that he was bleeding from his nose. On the assumption that it was standard procedure for the British High Commission to meet all forcible returnees from the UK at the airport in Colombo[173], we obtained consent from our client's family to disclose this information to the Migration Delivery Officer at the British High Commission. This consent was given on the express basis that this information would not be shared with the Sri Lankan authorities.

Following requests from us, a member of staff from the British High Commission travelled to the airport and was there with the family when our client was released. The British High Commission subsequently arranged for our client to see a doctor and accompanied him to the appointment on 24 February.

This case was central to Freedom from Torture's decision on Saturday 25 February to issue a public statement joining calls by Human Rights Watch, following publication of its evidence[174], for a suspension of removals of Sri Lankan Tamils from the UK.[175] However, because of our acute concerns about the safety of our client, we omitted any reference to the case and instructed our staff in writing not to discuss the case outside the organisation.

On Monday 27 February we were surprised to learn that the Treasury Solicitor's Department had in legal proceedings relating to a mass removal *charter flight* to Sri Lanka the following day filed a letter containing

[170] Freedom from Torture, "Sri Lankan Tamils tortured on return from the UK" (13 September 2012) at page 2, available at http://www.freedomfromtorture.org/sites/default/files/documents/Freedom%20from%20Torture%20briefing%20-%20Sri%20Lankan%20Tamils%20tortured%20on%20return%20from%20the%20UK_0.pdf

[171] N and Others v UK lodged 15 March 2012. Statement of Facts and Questions to the Parties available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001–112188. As of 21 June 2013, judgment in this case is still awaited.

[172] No medical evidence had been presented as part of his appeal and when a medico legal report was finally prepared for him in detention prior to his removal, the UKBA declined to consider this as part of a fresh asylum claim and removal was enforced.

[173] In a response to a letter from our Chief Executive, Keith Best, seeking details of the monitoring arrangements for those forcibly removed to Sri Lanka (a request which was not limited to those removed by charter flight), the FCO Minister for South Asia advised Freedom from Torture in writing on 23 January 2012 that the British High Commission "maintains oversight of the returns process. For the recent charter flight operations, UK Government officials were present at the airport and provided contact details of our High Commission in Colombo". We assumed that the same arrangements applied for those forcibly returned on scheduled flights.

[174] See Human Rights Watch, "UK: Halt Deportations of Tamils to Sri Lanka" 25 February 2012 available at http://www.hrw.org/news/2012/02/24/uk-halt-deportations-tamils-sri-lanka.

[175] Freedom from Torture, "UK must stop removals of Tamils to Sri Lanka after damning new evidence of torture on return" 25 February 2012 available at http://www.freedomfromtorture.org/news-blogs/6133.

information which obviously related to our client including the precise date and time of his arrival, his present whereabouts and details of the medical examination arranged by the British High Commission and the doctor who examined him.

The letter reported evidence from the doctor of "*abrasions to the shins... consistent with his explanation that the officer interviewing him at the airport and facing him had kicked him*", however the conclusion reached at the end of the letter was that the UK Border Agency (UKBA) "*does not find the allegations as made by the passenger to be credible and therefore this does not demonstrate that returnees face a real risk of ill treatment upon return*".

The letter, which was referred to in open court, was a clear violation of confidentiality and in our view the identifying information it contained exposed our client to serious risk.[176] Our fears were realised when a version of the Treasury Solicitor's Department letter with only our client's name redacted entered the public domain and wound up on a Sri Lankan government website where it was used to denounce a "*well organised effort by pro-LTTE elements in the UK to prevent UKBA from carrying out deportation of Sri Lankans who have failed to qualify for asylum.*"[177]

This framing of the case by the Sri Lankan government was founded on another regrettable feature of the Treasury Solicitor's Department letter, namely entirely false claims, presumably originating from the Migration Delivery Officer with whom our staff had been communicating, that Freedom from Torture had alleged "*torture*" of our client at the airport and that he had been seen with "*a head wound that was bleeding*".[178]

**Freedom from Torture believes that a purpose of this letter, based on information supplied by the British High Commission, was to ensure that information concerning the ill-treatment on arrival in Colombo of our client would not be used to disrupt the mass removal charter flight on 28 February.**

Our Chief Executive wrote to the Immigration Minister on 28 February 2012 asking for steps to be taken to ensure the immediate return of our client to the UK. By letter dated 12 March 2012, the Minister declined this request. **Following court action, our client was returned to the UK in late 2012. He has since been granted refugee status by the UKBA.**

In a judgment dated 5 October 2012, but only made public in March 2013, the High Court found that "*the use of the letter in the Tribunal with no attempt to maintain confidentiality made it inevitable that it would come to the attention of the Sri Lankan authorities*", that our client was placed at "*serious risk*" as a result, and that "*the lack of safeguards in the disclosure was not only in all probability a breach of confidence*" having regard to the basis on which Freedom from Torture shared information with the British High Commission about our client and his treatment at the airport *"but failure of good administration*".[179]

The British High Commission was also criticised by the High Court for accepting "*perhaps too readily*" that the 20 hours our client spent at the airport simply reflected a "*long queue*". Evidence from the Migration Delivery Officer, "*based on his experience of 4 years in Sri Lanka*", to the effect that our client was highly unlikely to have been identified by the Sri Lankan authorities based on the disclosures in the Treasury Solicitor's letter was rejected as "*singularly unimpressive*".

It is unclear to Freedom from Torture whether any steps have been taken by the British High Commission in Colombo, the FCO in London or the Home Office to ensure lessons from this case are learned.

### 3. Refusal by the government to amend its policy to reflect the evidence of torture and ill-treatment of Sri Lankan Tamils returning from the UK

3.1 Despite the evidence from Freedom from Torture and other NGOs that certain categories of Tamils returning to Sri Lanka from the UK are facing torture or ill-treatment, the government has remained steadfast in its refusal to accept the risk we have outlined and incorporate this into its asylum policy for Sri Lanka. It has maintained this position despite an extraordinary volume of evidence (including from its own asylum decision-making processes—see below), numerous injunctions granted to individuals on the basis of Freedom from Torture's September briefing[180], a general injunction granted by the High Court on 28 February 2013 prohibiting the removal of any refused Tamil asylum seekers[181], and a recent call by CAT for the UK to revise its asylum policy to reflect evidence of torture and ill-treatment of Sri Lankan Tamils following forced or

[176] Freedom from Torture's Chief Executive complained about this in writing on 28 February 2012 to the Attorney-General, the Immigration Minister, and the FCO Minister for South Asia.

[177] "False torture claims of failed UK asylum seekers exposed" (29 February 2012) available at http://www.priu.gov.lk/news_update/Current_Affairs/ca201202/20120229false_claims_failed_uk_asylum_seekers.htm. On the same day, the Sri Lankan Ministry of Defence and Urban Development described Freedom from Torture as a "proxy terror group". See "UK rejects US based HRW"s cynical claims over deportation of bogus asylum seekers" (29 February 2012) available at http://www.defence.lk/new.asp?fname=20120229_04.

[178] Our Chief Executive pointed out these inaccuracies in his letters dated 28 February 2012 to the Attorney-General, the Immigration Minister, and the FCO Minister for South Asia.

[179] S v Secretary of State for the Home Department [2012] EWHC 2638 at paras 28, 42.

[180] See for example R (on the application of Qubert) v Secretary of State for the Home Department [2012] EWHC 3052 (Admin). Freedom from Torture intervened in these proceedings as a third party.

[181] The order is available at http://www.freemovement.org.uk/2013/02/27/suspension-ordered-on-removal-of-tamil-asylum-seekers/.

voluntary return from the UK. In a sign of the severity of its concerns, CAT has identified this as one of four issues for which a follow-up response is needed from the UK in 12 months time.[182]

3.2 The relevant policy is contained in a highly controversial Country Policy Bulletin on Sri Lanka issued in October 2012.[183] To date this Bulletin has been revised twice owing to material inaccuracies in the presentation and interpretation of NGO evidence, leading to a formal complaint to the courts by the Immigration Law Practitioners' Association given reliance by the UKBA on this inaccurate Bulletin when defending injunction applications in removal cases. On 26 November 2012, Freedom from Torture filed a 6 page letter of complaint about the misrepresentation of our evidence and no substantive response was received for almost four months until *after* the High Court issued the general injunction referred to above. Many key concerns about the handling of Freedom from Torture's evidence in this Bulletin have still not been addressed.

3.3 The government has sought to deflect discussions about the safety of its Tamil removals policy by pointing to ongoing litigation on these issues (a country guidance case on the risk on return for Sri Lankan Tamils is pending before the Asylum and Immigration Chamber of the Upper Tribunal). Clearly, however, it does not require instruction from the judiciary before revising its policy to reflect the overwhelming evidence before it. Moreover, **although refused Tamil asylum seekers cannot be removed presently, the flawed policy continues to be used as a basis for decision-making in asylum claims by Sri Lankan Tamils**.

3.4 **It appears to Freedom from Torture that in this particular matter the government has (a) eschewed an evidence-based approach to policy and instead sought to twist the evidence to fit a policy that is preferred for other unknown reasons, and (b) been motivated by an overriding objective to stop our evidence being successfully relied on to stop individual removals or derail the charter flights.**

*Unreasonable requests for Freedom from Torture and other NGOs to disclose the identities of the victims in our research samples*

3.5 Throughout 2012, Freedom from Torture and Human Rights Watch sought to engage with the FCO and UKBA about the *patterns* emerging from our research on torture and ill-treatment of Tamils returning to Sri Lanka from the UK and to discuss their *policy implications*. However, Ministers and officials resisted engagement with us on a policy level, asking us instead to disclose the Home Office case references for the cases in our respective data sets so that the UKBA could look into the *individual cases* for itself.

3.6 Freedom from Torture has repeatedly explained that we are not in a position to disclose identifying details because this would breach our confidentiality and data protection obligations and, in any case, as an expert witness, or potential expert witness, in adversarial proceedings against the Secretary of State for the Home Department involving the individuals whose cases were included in our research, it would not be appropriate for us to discuss directly case details with the UKBA.

3.7 A wider point, which is unlikely to be lost on this Committee given its international focus, is the danger that this approach could be construed as supportive of efforts by other governments to undermine human rights research by challenging methods of presenting research, including anonymisation and aggregation, aimed at protecting the identities of human rights victims and highlighting patterns of abuse. Freedom from Torture is highly concerned that the UK government's stance on this issue mirrors the approach of Sri Lanka and other torturing states when confronted at the UN with evidence of human rights abuses for which they are responsible.

3.8 **Recommendation 1: We recommend that the Committee, when taking oral evidence from Ministers for this inquiry and in its report, explore this point of principle and underscore the unfortunate international precedent which would be set if the UK continues to insist on disclosure by respected NGOs such as Freedom from Torture of the identities of victims included in their research before the conclusions of such research can be accepted for policy purposes.**

*Claims by FCO Ministers and officials that allegations of post-removal abuse are unsubstantiated*

3.9 Throughout 2012, FCO Ministers and officials repeatedly responded to concerns voiced by MPs and journalists based on evidence published by Freedom from Torture and other NGOs by insisting that there were "*no substantiated allegations*" of abuse of Sri Lankan Tamils removed from the UK (see Appendix 1 for a selection of these statements together with commentary from Freedom from Torture). For example, on 22 February the day after the removal of our client featured in the case study above, the FCO Minister for South Asia, Alistair Burt MP, stated in Parliament that "*We are aware of media allegations that returnees are being abused. All have been investigated by the high commission, and no evidence has been found to substantiate any of them*".[184] An almost identical statement was included in the Sri Lanka section of the FCO's annual *Human Rights and Democracy* report for 2011 (published in April 2012).[185] On 20 June 2012, a Sri Lankan media outlet claimed that an unnamed official at the British High Commission stated one day earlier that "*The*

[182] CAT/C/GBR/CO/5 at paras 20 and 38.
[183] The Bulletin is available at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificpolicybulletins/srilanka-polbulletin?view=Binary.
[184] HC Deb, 22 February 2012, c293WH.
[185] Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report, p. 326.

*British High Commission had not received any substantiated allegations of mistreatment on return of those removed from the UK".*[186]

*The government's own evidence of post-removal torture or ill-treatment*

3.10 It is of considerable concern to Freedom from Torture that there is *no feedback loop between the Home Office and FCO for policy purposes* in respect of post-removal torture or ill-treatment allegations found credible in the asylum context by the UKBA or Tribunal. We are also disappointed that when we and other NGOs began to share our evidence concerning ill-treatment on return of Sri Lankan Tamils, the government failed to initiate an *ad hoc* review to discover any similar evidence in its own possession from the determination of asylum claims of those who were fortunate enough to make it back to the UK.

3.11 On 15 November 2012, Freedom from Torture lodged a Freedom of Information (FOI) Act request to pressure the government to conduct a review of its own evidence relating to those tortured or ill-treated after forcible return to Sri Lanka from the UK. In a response dated 6 February 2013 (provided at Appendix 2), **UKBA disclosed that between May 2009 and September 2012, numerous Sri Lankan nationals were granted protection by the UKBA or Tribunal after previously being refused and removed from the UK**.[187] Although the UKBA's response identifies 15 such cases, the Treasury Solicitor's Department has since clarified that the precise number is 13, two of which were returns to a third country under the Dublin Convention and two of which were voluntary returns.[188] Notable features of the FOI response include:

— Confirmation that all of these cases involved allegations of torture or ill-treatment on return to Sri Lanka; and

— Failure, without explanation, to answer our specific question about the number of such cases in which allegations of post-removal torture or ill-treatment were found credible by either UKBA or the Tribunal.[189]

3.12 The Treasury Solicitor's Department has since provided further details of these cases in a bid to challenge arguments that there might be "*a direct link between UKBA return and their subsequent and later successful application for asylum*".[190] For example, evidence was shared about the length of time the individuals remained in Sri Lanka between their removal and return to the UK, but without disclosure of when and for how long the individual was detained by the Sri Lankan authorities such information is meaningless. Interestingly, however, and despite the additional analysis that had clearly been conducted of these cases, **there has still been no disclosure of the number of these cases in which the post-return torture or ill-treatment allegations were found credible and the information contained in the FOI response is still not acknowledged in the UK's asylum policy for Sri Lanka**.

3.13 The FOI response was sent to Freedom from Torture just five days after the FCO Minister for South Asia, Alistair Burt MP, repeated to the BBC during a visit to Sri Lanka the claim that allegations of post-removal torture of Sri Lankan Tamils removed from the UK had not been substantiated.[191]

3.14 To the best of our knowledge, since being confronted with the FOI response referred to above, Ministers have stopped claiming that there are no substantiated allegations of post-removal abuse of Tamils sent back by the UK and the claim is not repeated in the Sri Lanka section of the FCO's *Human Rights and Democracy* report for 2012. To date, however, there has been no correction of the public record.

3.15 In October 2012, this Committee concluded that the government had not been sufficiently "*forthcoming*" about "*its efforts—in general and in specific cases—to assess the level of risk*" to the safety of removed Tamils and called for the Foreign and Commonwealth Office (FCO) to be "*energetic*" in evaluating reports and *in spelling out the risk to the UK Border Agency.*"[192]

3.16 **Recommendation 2**: **Freedom from Torture recommends that the Committee use this inquiry to get to the bottom of what Ministers and senior officials in the FCO and Home Office knew about evidence of torture or ill-treatment of Tamils forcibly removed from the UK to Sri Lanka and why statements confirming that there was no "substantiated" allegations continued to be made throughout 2012 and early 2013** despite the medical evidence obtained by the British High Commission regarding the ill-treatment of our client removed on a scheduled flight on 20 February 2012, a Tribunal determination which Human Rights Watch drew attention to in May 2012 confirming that the Tribunal had accepted post-removal torture

[186] See for example, The Island Online, "British HC denies claims of deportee abuse" 20 June 2012 available at http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=54899.

[187] Freedom from Torture's statement in response is available at http://www.freedomfromtorture.org/news-blogs/7104.

[188] Letter from the Treasury Solicitor's Department to the Administrative Court Office at the Royal Courts of Justice regarding "Enforced returns to Sri Lanka by charter flight on Thursday 28 February 2013" (22 February 2013).

[189] Presumably, explicit findings on this point would have been made by the Tribunal in all of the cases (up to 10) granted protection following an allowed appeal.

[190] Letter from the Treasury Solicitor's Department to the Administrative Court Office at the Royal Courts of Justice regarding "Enforced returns to Sri Lanka by charter flight on Thursday 28 February 2013" (22 February 2013).

[191] The audio of this interview is available at http://audioboo.fm/boos/1203963-alistair-burt-bbc-interview-in-sri-lanka-comments-on-torture-allegations#t=0m39s.

[192] Foreign Affairs Committee, Third Report of Session 2012–13, The FCO's human rights work in 2011, HC 116, paras 56 and 58.

allegations in the case of a woman who returned to the UK in 2010[193], and the strong suggestions in the FOI response dated 6 February 2013 that there are many other cases in which post-removal allegations of torture or ill-treatment of Sri Lankans have been accepted either by the UKBA or the Tribunal.

3.17. **In particular, Freedom from Torture recommends that the Committee:**

**(i) ask the government to disclose (a) the number of Sri Lankan cases in which allegations of torture or ill-treatment following removal from the UK in the post-conflict period have been found credible by the UKBA or Tribunal; and (b) the number of these cases involving Tamils;**

**(ii) Urge the government to correct any misleading statements to Parliament or the public that there are no "substantiated allegations" of abuse on return of refused Sri Lankan Tamil asylum seekers;**

**(iii) recommend a cross-departmental review by the FCO, Home Office and,** because it is responsible for the conduct of the Treasury Solicitor's Department, **the Attorney-General's Office of the government's handling of evidence of torture or ill-treatment of Tamils returning to Sri Lanka from the UK.** The review should be led at board management level in each department and should involve input from relevant NGOs. The terms of reference for this review should be agreed with the Foreign Affairs Committee and the Home Affairs Committee and the results delivered to these committees for scrutiny.

## 4. The role of the British High Commission in monitoring the safety of forced returnees to Sri Lanka

4.1 As set out above, Freedom from Torture strongly believes that there are certain categories of Tamils—those returning from the UK with a real or perceived LTTE association at any level—whose protection needs are not sufficiently addressed in the UK's asylum policy for Sri Lanka and that the most appropriate means of ensuring their safety is to amend this policy to reflect the risks we have identified and for decisions on individual asylum claims to be taken accordingly.

4.2 However, in light of the dire human rights situation in Sri Lanka generally and the fact that Freedom from Torture only comes into contact with a small proportion of torture victims (those with the means and opportunity to flee to the UK who are successfully referred to us for clinical services including medico legal reports), it is entirely possible that there are other groups of Sri Lankans, including other categories of Tamils, who are being denied protection according to current policy but who, in reality, face a real risk of torture on return. With this in mind, we accept the need for post-removal monitoring.

### *Monitoring on arrival at the airport*

4.3 The case above involving a Freedom from Torture client removed on a scheduled flight in February 2012 exposed a discrepancy in reception arrangements between those removed from the UK on scheduled and charter flights. Whereas **British High Commission officials attend the airport in Colombo for the arrival of UKBA charter flights, those forcibly returned on scheduled flights are left to fend for themselves. Given the ill-treatment on arrival of our client after removal on a scheduled flight, this discrepancy is a source of considerable concern to Freedom from Torture**.

4.4 During a Westminster Hall debate on 22 February 2012, the FCO Minister for South Asia acknowledged this discrepancy and stated that he had "*asked colleagues in Colombo to see what we can do to meet scheduled flights as well, where that is practicable*".[194] However, by email dated 20 July 2012, an FCO official in the Migration Directorate advised Freedom from Torture that:

> *"HMG's consistent policy, has been that meeting charter flights is an exceptional practice due to the large scale logistics of removing several returnees collectively. As this continues to be the case the review findings were to maintain the status quo. [British High Commission] staff will continue to facilitate returnees on charter flights through the airport to ensure a quick process once the flight lands and UKBA will continue to have the option to request assistance, on an exceptional basis, on schedule [sic] flights."*

4.5 The FCO also confirmed in this communication that between January and June 2012 the UKBA had not asked the British High Commission to attend the airport to meet any forced returnees arriving by scheduled flight. It is not clear to Freedom from Torture how many refused asylum seekers are removed to Sri Lanka on scheduled flights, however the reluctance of the government to alter its procedures suggests that the numbers are not negligible.[195]

[193] Guardian, "Stop Sri Lanka deportation flights, says Human Rights Watch" available at http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture?INTCMP=SRCH.

[194] HC Deb, 22 February 2012, c293WH.

[195] Parliamentary questions designed to elicit this information have been unsuccessful. See for example HC Deb, 12 March 2012, c65W.

*Proactive ongoing monitoring*

4.6 Freedom from Torture's research on torture practices in Sri Lanka suggests that the risk of detention and torture or ill-treatment may persist for many months after return to Sri Lanka.[196] In this context short- and long-term monitoring of the safety of forced returnees should be undertaken. As a torture treatment centre operating in the UK only, we are not well-placed to advise on effective methods of in-country monitoring in the longer term and who is best placed to undertake such monitoring. We consider, however, that steps should be taken to confirm the safe arrival of each returnee at their final destination after leaving the airport; we are aware of cases in which both voluntary and forcible returnees were picked up at the airport by the Sri Lankan authorities and taken to detention facilities for interrogation and torture.

*Reactive ongoing monitoring*

4.7 We understand that all refused asylum seekers who are removed to Sri Lanka are given the contact details for the British High Commission and advised to make contact should they require assistance. It is unclear whether any victims of post-removal ill-treatment have attempted to contact the British High Commission but even those in a position to establish contact may not, following a forced removal, feel able to trust the British High Commission.[197] The handling of the case of our client who was ill-treated after removal on a scheduled flight in February 2012 (see case study above) suggests that the British High Commission may approach such investigations from a starting point of disbelief.

4.8 Ministers have confirmed in response to parliamentary questions filed by Committee member Mike Gapes MP that responsibility for investigating any allegation of ill-treatment on return to Sri Lanka rests with the Migration Delivery Officer at the British High Commission.[198] They have also confirmed that this post forms part of the overseas network of the FCO's Migration Directorate and that 97% of the funding[199] and 46% of the staffing[200] for this Directorate come from the UKBA. Freedom from Torture understands that the Migration Delivery Officer in Colombo who dealt with our client who was ill-treated at the airport in February 2012 was in fact an immigration officer on loan from the Home Office.

4.9 Freedom from Torture believes that **it is inappropriate for Migration Delivery Officers, because of their close links to the Home Office, to be tasked with investigating allegations of harm following forced removal**. **We would strongly welcome scrutiny by the Committee of what appears to be a dual role for this post in arranging and ensuring the smooth operation of the charter flights and in investigating allegations of abuse on return and to consider whether this may give rise to a conflict of interest or perception of the same.**

4.10 **Recommendation 3**: **British High Commission officials should be required to attend the airport in Colombo to meet all forced returnees arriving by scheduled flights and monitoring should be conducted to ensure that all returnees, whether arriving by scheduled or charter flight, arrive safely at their destination after leaving the airport. Long-term monitoring arrangements should also be put in place. Responsibility for investigating allegations of post-removal ill-treatment in Sri Lanka and elsewhere should be transferred from Migration Delivery Officers to a post or body that is wholly independent of the Home Office**.

For further information please contact Sonya Sceats, Policy and Advocacy Manager, ssceats@freedomfromtorture.org or 020 7697 7766.

## 5. **Appendix 1**

Statements by Ministers and senior officials that there are no "substantiated" allegations of torture or ill-treatment following forcible return to Sri Lanka

5.1 The following are examples of statements by Ministers and senior officials to the effect that there are no "substantiated" allegations of torture or ill-treatment following forcible return to Sri Lanka from the UK, accompanied by commentary from Freedom from Torture.

5.2 22 February 2012: FCO Minister for South Asia, Alistair Burt MP: "*We are aware of media allegations that returnees are being abused. All have been investigated by the high commission, and no evidence has been found to substantiate any of them... I assure the hon. Gentleman and the House that the same information is given to everyone to allow people to contact us in private—not the Sri Lankan authorities—and so far we have*

[196] Fourteen of the 35 cases in our report Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka, 2009–2011, involved torture following periods of residence or travel abroad. In five cases, the episode of detention and torture documented in our medico legal report occurred over a year and up to seven years after return. In the remaining nine cases, the individual was detained and tortured within days, weeks or a month of their return. See page 7 of the report which is available at http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Report_for%20release%208%20Nov%20-%20with%20cover.pdf.

[197] Indeed it has been reported to us anecdotally that Tamil returnees are reluctant to contact the British High Commission in Colombo.

[198] HC Deb, 30 April 2012, c1359W.

[199] HC Deb, 30 April 2012, c1348W.

[200] HC Deb, 30 April 2012, c1349W.

*not been able to substantiate allegations. However, we remain open to anything that would do that, because it is essential that those returned are safe*" (emphasis added).[201]

This statement was made on the day following ill-treatment of a Freedom from Torture client at the airport in Colombo after forced return from the UK on a scheduled flight (see case study above). The FCO was aware at this point of the ill-treatment allegations although the medical examination arranged by the British High Commission had not yet taken place.

5.3 1 March 2012: then Immigration Minister, Damian Green MP: "*The UK Border Agency has considered recent reports and at present has no substantiated evidence of mistreatment by the Sri Lankan authorities of enforced returnees from the UK*" (emphasis added).[202]

This statement was made almost a week after the medical examination of our client and three days after the Treasury Solicitor Department's letter to the Administrative Court detailing the medical examination and confirming "*abrasions to the shins... consistent with his explanation that the officer interviewing him at the airport and facing him had kicked him*".[203]

5.4 30 April 2012: then FCO Minister of State, Jeremy Browne MP: "*The Migration Delivery Officer (MDO) in Colombo is responsible for investigating any claims of ill-treatment of those forcibly returned to Sri Lanka. To date no allegation of mistreatment has been substantiated following these investigations*" (emphasis added).[204]

This statement is surprising in light of the Migration Delivery Officer's direct responsibility for investigating the allegations of ill-treatment of our client and his role in procuring the medical evidence referred to above.

5.5 19 June 2012: Director of Multilateral Policy at the FCO, Vijay Rangarajan, in oral evidence to this Committee: "*There is certainly a substantial amount of maltreatment and torture in Sri Lanka, but we do not yet have substantiated evidence that the people whom we have returned through the assurances have been maltreated*" (emphasis added).[205]

5.6 16 October 2012: FCO Minister for South Asia, Alistair Burt MP: "*We take all allegations of torture and mistreatment very seriously. However on the basis of allegations raised with the FCO we have not been able to identify any individuals as having been deported to Sri Lanka from the UK since 2010 and subsequently tortured*"' (emphasis added).[206]

This statement followed public disclosure by Human Rights Watch on 31 May 2012 that in one case in their research on torture following forcible return to Sri Lanka from the UK and elsewhere, the Tribunal had *accepted* evidence that a Tamil woman had been tortured following forcible return to Sri Lanka from the UK. Human Rights Watch had made clear that the woman had managed to return to the UK in late 2010.[207]

5.7 8 December 2012: Immigration Minister Mark Harper MP: when asked in oral evidence by the Home Affairs Committee whether he stood by the statement made by his predecessor to the effect that "*there is no substantial evidence of mistreatment by the Sri Lankan authorities of those who have been forcibly returned by the UK authorities to Sri Lanka?*", the Minister replied "*Yes*."[208]

The Home Affairs Committee asked this question in connection with the data disclosed to it by UKBA confirming that between 1–3 Sri Lankans had been granted protection in quarters 1 and 2 2012 after previously having been removed from the UK.[209]

5.8 1 February 2013: FCO Minister for South Asia, Alistair Burt MP, in an interview with the BBC referring to allegations of "torture or ill-treatment on return" to Sri Lanka: "*We do not have the direct evidence of which you speak. We are aware of the allegations and we have sought to get confirmation. And certainly we are open to any information about those who have been returned and what has happened to them. So far we have not had those allegations substantiated... We have looked at cases which have been brought to us, I have to tell you because I look into this extremely carefully, I have just not seen this*".[210]

This statement was made during the Minister's trip to Sri Lanka just five days before UKBA confirmed in a letter to Freedom from Torture that it had granted refugee status to up to 15 Sri Lankans who alleged that they were tortured or ill-treated following forcible removal to Sri Lanka (see Appendix 2).

[201] HC Deb, 22 February 2012, c293WH.
[202] HC Deb, 1 March 2012, c461W.
[203] The notes of the medical examination also indicated that the doctor advised our client to see an ENT doctor which is consistent with claims his nose bled following a beating at the airport.
[204] HC Deb, 30 April 2012, c1359W.
[205] Foreign Affairs Committee, Third Report of Session 2012–13, The FCO's human rights work in 2011, HC 116, Ev 26.
[206] HC Deb, 15 October 2012, c75W.
[207] Guardian, "Stop Sri Lanka deportation flights, says Human Rights Watch" available at http://www.guardian.co.uk/world/2012/may/31/sri-lanka-deportation-torture?INTCMP=SRCH.
[208] Home Affairs Committee, Fourteenth Report of Session 2012–13, The work of the UK Border Agency (July–September 2012), HC 792, Ev 23.
[209] Home Affairs Committee, Eighth Report of Session 2012–13, The work of the UK Border Agency (April–June 2012), HC 603, para 62.
[210] The audio of this interview is available at http://audioboo.fm/boos/1203963-alistair-burt-bbc-interview-in-sri-lanka-comments-on-torture-allegations#t=0m39s.

5.9 On 26 March 2013 the Home Affairs Committee posed the following question to the Chief Executive of the UKBA, Rob Whitman, in relation to UKBA's response to the Freedom of Information Act request filed by Freedom from Torture: "*Do you now accept that there is in fact substantiated evidence that Tamils forcibly removed to Sri Lanka have been mistreated, as evidenced by the fact we have taken 13 of them and said, "Yes, you can come here because you were tortured"?*" Mr Whiteman failed to answer this question, stating only that "*The Home Office will continue to look at information that comes to light*".[211]

*21 June 2013*

[211] Home Affairs Committee, Uncorrected transcript of oral evidence to be published as HC 924-I available at http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/uc924-i/uc92401.htm.

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